UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

PAVLO M. ZINKEVYCH, [redacted]	§	
PETITIONER	§	
vs.	§	**Civil Action No. 3:25-CV-01149-N-BW**
JOSH JOHNSON, Acting Field Office Director (Dallas), Immigration and Customs Enforcement, *et al.*,	§	
RESPONDENTS	§	

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

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I.
FACTUAL AND LEGAL BACKGROUND

Petitioner is a citizen of Ukraine. He came to the U.S. legally on August 13, 2022, and received employment authorization soon thereafter. His wife is a lawful permanent resident of the United States. After an arrest on a misdemeanor charge of drunk driving, on January 26, 2025, DHS took him into custody and began removal proceedings. They remain pending. Petitioner has not been convicted of the DWI charge or of any other offense. Petitioner's detention is unlawful because he cannot be removed anytime in the reasonably foreseeable future.

The Secretary of Homeland Security may designate a foreign state for Temporary Protected Status (TPS), if, *inter alia*, a war there would threaten the safety of returning nationals.[1] TPS for Ukraine has been designated and extended through October 19, 2026.[2] It may well be renewed for at least another 18 months thereafter. Petitioner filed a timely application for TPS almost nine months ago. It remains pending. He therefore cannot be removed from the United States until Ukrainian TPS expires—roughly 12 months from now, ***if*** Ukrainian TPS is not extended—and beyond that if that designation is extended. His detention is therefore unlawful.

In the removal proceedings, DHS expressly conceded before the Immigration Judge that Petitioner is prima facie eligible for Temporary Protected Status *and* entitled to employment authorization. However, DHS has refused to issue Petitioner employment authorization and has failed to act on the application in a bad-faith effort to "run out the clock," costing Petitioner his liberty and the government thousands of dollars in self-imposed detention costs.

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[1] 8 U.S.C. § 1254a(b)(1)(A).

[2] "Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Ukraine for Temporary Protected Status (TPS) for 18 months, beginning on April 20, 2025, and ending on October 19, 2026." *Extension of the Designation of Ukraine for Temporary Protected Status*, 90 Fed. Reg. 5936 (Jan. 17, 2025).

Petitioner's applied for habeas relief to end his indefinite detention, which now has lasted almost ten months. He now seeks injunctive relief to protect him from further ongoing and imminent harm caused by his unlawful detention by Respondents, despite their knowledge that he cannot be removed. He asks this Court to enjoin Respondents from continuing Petitioner's detention and to order his immediate release.

II.
ARGUMENT

Temporary and preliminary injunctive relief requires Petitioner to demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities weigh in his favor, and (4) an injunction is in the public interest.[3] When the government is a party, the balance of equities and public interest merge.[4] Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c). Petitioner has never absconded and, given his interest in his pending, approvable TPS application and his marriage to a legal resident, he has no interest in absconding.

A. Petitioner Is Likely to Succeed on the Merits of His Claims.

1. *Petitioner is likely to prevail on his claim that he is prima facie eligible for TPS.*

a. As Respondents have admitted, Petitioner is prima facie eligible for TPS.

DHS has extended Ukraine's TPS designation through October 19, 2026.[5] In the removal proceeding, DHS conceded that Petitioner is prima facie eligible for TPS, and entitled to its benefits:

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[3] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
[4] *Nken v. Holder*, 556 U.S. 418, 435 (2009).
[5] *Extension of the Designation of Ukraine for Temporary Protected Status*, 90 Fed. Reg. 5936 (Jan. 17, 2025

> 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.*[6]

Respondents have since argued that DHS conceded only that Petitioner "*appeared*" eligible.[7] *They miss the point*: An applicant who "*appears*" TPS eligible ***is*** *prima facie* eligible.

Under controlling regulations, "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***."[8] If a TPS application *claims* eligibility *on its face*, the applicant *is, by definition, prima facie eligible*. Respondents fail to address this in their stubborn attempt to escape their obligation to extend temporary TPS benefits to Petitioner, even having *expressly conceded* his *prima facie eligibility* in the removal proceedings. Withholding TPS benefits from Petitioner violates the statute and the regulations, which require extension of TPS benefits to an alien whose application *claims* TPS eligibility.[9]

Without authority, Respondents argue Petitioner is not entitled to TPS benefits because USCIS has not yet "reviewed" his application for prima facie eligibility.[10] Not so. If DHS were authorized to withhold TPS benefits until it declared it had reviewed one's application, Respondents could easily vitiate the statute by deporting TPS applicants before conducting any such review, or by refusing authorization for a significant portion of a nation's TPS designation period, which it also has done in this case.[11]

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[6] DHS Opposition to Termination, p. 2, ¶ 3 (emphasis added).
[7] Doc 7, p. 6, n. 1 (emphasis in original).
[8] 8 C.F.R. § 1244.1.
[9] 8 U.S.C. § 1254a(a)(4).
[10] Doc 7, pp 5-6.
[11] 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.

Congress expressly intended that TPS applicants receive TPS benefits *while their applications are pending*. Respondents' reliance on their failure to "review" Petitioner's TPS application is a attempt to circumvent the statutory obligation to provide TPS benefits while the application is pending.[12] DHS' own regulations state that TPS benefits "shall" be extended "***[u]pon the* filing *of an application*** for Temporary Protected Status."[13]

b. **Respondents refuse to adjudicate the TPS application expeditiously.**

Despite Petitioner's detention, Respondents insist on preserving the pretext for detaining Petitioner by repeatedly refusing to expedite adjudication of his TPS Application. To qualify for TPS, Petitioner must: (**1**) be from Ukraine, (**2**) have been physically present since October 23, 2023, when TPS was designated and have resided in the U.S. by August 16, 2023,[14] (**3**) be admissible except for grounds waived by TPS,[15] (**4**) not have a felony or multiple misdemeanor convictions,[16] and, (**5**) have registered for TPS between January 17 and March 18, 2025.[17]

Respondents have conceded before this court that Petitioner has satisfied the first, second, and fifth requirements.[18] He satisfies the third requirement because he is inadmissible only on the specific ground **expressly waived by the TPS statute.**[19] He satisfies the fourth requirement,

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[12] Undersigned counsel believes that Respondents continue to withhold employment authorization from Petitioner to bolster their case for his detention. 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 adjudicate it on appeal, even if DHS were to deny it.

[13] 8 C.F.R. § 244.5 (b). *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.").

[14] 8 C.F.R. §§ 244.9, 1244.9. 8 U.S.C. §§ 1254a(c)(1)(A)(i), 1254a(c)(1)(A)(ii).

[15] 8 U.S.C. § 1254a(c)(2)(A)(iii); 8 U.S.C. § 1254a(c)(1)(A)(iii).

[16] 8 U.S.C. § 1254a(c)(2)(B)(i).

[17] 8 U.S.C. § 1254a(c)(1)(A)(iv).

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

[19] 8 U.S.C. § 1254a(c)(2)(A)(i).

relating to criminal convictions, because he has never been convicted of *any* crime.[20]

Respondents have nevertheless denied requests, made on April 16, 2025, on June 11, 2025, and on October 7, 2025, to expedite the TPS Application—all without explanation. On October 23, 2005, Respondents denied a separate expedite request communicated to them by North-Texas Congressman Brandon Gill.[21]

2. ***Petitioner is likely to prevail on his claim that his continued detention is unlawful because he cannot be removed from the United States.***

The Supreme Court has pointed out that the legitimate purpose of detention during removal proceedings is to preserve the ability to remove an alien if so ordered.[22] When removal is not likely in the reasonably foreseeable future, detention serves no *legitimate* purpose.[23] *With or without* a removal order, Respondents cannot and could not remove Petitioner at least until the end of Ukraine's TPS designation. And his removal will be forbidden *beyond* that date if Ukraine's TPS is again extended, which is reasonably probable. Significantly, though the President has ended TPS for several nations, he has *not* disturbed the TPS designation of Ukraine and has commented that Ukrainians will likely be allowed to remain in the U.S.[24]

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[20] No one suggests otherwise, and Petitioner would remain TPS eligible even if convicted of the pending DWI, as only multiple misdemeanors are disqualifying. 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).

[21] Respondents have attempted to characterize Petitioner as unworthy of any favorable exercise of discretion. They are mistaken. First, he built a successful business that allowed him to support himself and his family until he was detained. While detained, he has participated in many educational offerings and has earned certificates reflection his completion of at least 10 courses.

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

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

[24] *Ukraine updates: Trump tells DW Ukrainians may remain in US*, July 30, 2025. https://www.dw.com/en/ukraine-updates-trump-tells-dw-ukrainians-may-remain-in-us/live-73463128.

Respondents suggest that *Demore v. Kim* sanctioned indefinite detention pending removal proceedings. It did not. The Court, contemplating a "five month" detention period, upheld the constitutionality of Kim's detention for that "limited period," for a **criminal** alien, who had conceded his deportability.[25] In view of the brevity of the detention, *Demore* upheld the statutory provision requiring Kim's mandatory detention as a **criminal alien**.[26] Petitioner, who is not subject to that provision, has been held almost ten months.

Moreover, Kim *could* and certainly *would* be promptly deported once his removal proceeding ended. Petitioner, in contrast, cannot be removed because Ukraine's TPS designation forbids it. And a removal order against Kim was all but certain because he had multiple criminal convictions and had conceded deportability.[27] Entry of a removal order against Petitioner, on the other hand, is unlikely given his eligibility for more than one form of relief.[28]

Salad v. Department of Corrections, decided only eight months ago, is very similar to Petitioner's case.[29] Salad, a citizen of Somalia, was arrested as he crossed the southern border.[30] He applied for asylum, which the Immigration Judge denied and the BIA left undisturbed.[31] DHS later released him, but again arrested him once he applied for TPS.[32] He applied for a writ of

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[25] *Demore v. Kim*, 538 U.S. 510, 531 (2003).
[26] *Id.* at 529-31.
[27] *Id.* at 513-14.
[28] In is unlikely Petitioner will ever be removed or even ordered removed, because he has relief from removal other than TPS. Moreover, his wife is a lawful permanent resident through whom he will become eligible for adjustment of status.
[29] *Salad v. Dep't of Corr.*, 769 F.Supp. 3d 913, 914 (D. AK., 2025).
[30] *Id.*
[31] *Id.* at 916-17.
[32] *Id.*

habeas corpus two days later.[33] As in this case, there was "no significant likelihood of removal in the reasonably foreseeable future."[34] The Magistrate Judge so found.[35] 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.[36]

The Court therefore ordered Salad's release, after just 30 days in jail.[37] Petitioner, who cannot be removed for at least another year (*if* Ukrainian TPS is *not* extended), has been jailed almost 10 months.[38] Just as in *Salad v. Department of Corrections*, it is "'virtually certain that [Petitioner] will not be removable through the end of the most recent TPS designation.'"[39] His removal will be forbidden *beyond* that date if Ukraine's TPS is again extended, which is reasonably probable.[40]

In contrast with *Salad v. Department of Corrections*, *Fugon v. Napolitano*, on which Respondents rely, bears no resemblance to this case.[41] Fugon was stripped of his status and ordered removed over marriage fraud—a result the BIA sustained.[42] His application for TPS was

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[33] *Id.*
[34] *Id.* at 917; 923.
[35] *Id.*
[36] *Id.* at 923.
[37] *Id.* at 919, 924.
[38] *Salad* is apposite, although he was far-worse situated than Petitioner, who has other, unadjudicated statutory remedies to pursue, such adjustment of status, in addition to TPS. *Salad*, 769 F. Supp. 3d at 919, 924.
[39] *Salad v. Dep't of Corr.*, 769 F.Supp. 3d 913, 919 (D. AK., 2025).
[40] 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-may-remain-in-us/live-73463128.
[41] Doc. 7, pp. 4-5.
[42] *Fugon v. Napolitano*, No. 2:2010cv13935 – Document 11 (E.D. Mich. 2010), p. 2.

denied.[43] He filed a second TPS application and sought *habeas* relief.[44] That relief was denied, *not* because, as Respondents suggest, because his TPS application had no effect on the legality of his detention, but because Fugon's detention during the 90-day removal period immediately following entry of the removal order was authorized by the statute.[45] The court found that Fugon's *habeas* petition lacked merit because it was filed *before* the end of the statutory 90-day removal period.[46]

Due process also prevents Petitioner's removal while his TPS application is pending. First, Petitioner is entitled to a final decision on his application. Having paid a fee to file it, he has a property interest in it, of which he cannot be deprived without due process.[47] Thus, for a separate reason, Petitioner cannot be removed in the foreseeable future, his detention serves no legitimate purpose and is unlawful.[48]

B. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Injunctive Relief.

Parties seeking preliminary injunctive relief must show they are "*likely* to suffer irreparable harm in the absence of preliminary relief."[49] Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages."[50]

Petitioner has suffered and continues to suffer irreparable harm resulting from his

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[43] *Id.*
[44] *Id.*
[45] Doc. 7, pp. 4-5. *Fugon*, p. 2.
[46] *Id.* at 5-6.
[47] *See Foucha v. Louisiana*, 504 U. S. 71, 80 (1992). Counsel for Petitioner has not found any decision allowing the removal of anyone with an undecided TPS application.
[48] Finally, by regulation, only *ineligible* aliens may be detained. 8 C.F.R. § 244.18(d).
[49] *Winter*, 555 U.S. at 20.
[50] *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

detention. First, unlawful detention itself is a sufficient irreparable injury.[51] In addition, his continued detention risks irreparable harm to his health. Petitioner has worsening chronic periodontal disease. His dental surgeon explains that resulting abscesses "can cause life-threatening outcomes." *and* that he has an untreated abscess. When the abscess worsens, it could endanger him. This injury, which has no legal remedy, is irreparable harm.[52]

Apart from the damage to his health, Petitioner has suffered and will continue to suffer other irreparable harm without injunctive relief. Before his detention, Petitioner had built a strong business as an independent contractor laying and repairing fiberoptic cable. His detention and the denial of employment authorization have prevented him from taking on and completing jobs at the request of several corporations. This has all but destroyed his business. The longer his detention persists, the more difficult it will be for him to re-establish himself, as corporations increasingly turn to other contractors to fulfill their needs. Petitioner's inability to work has also led to the destruction of his credit. Courts have recognized that the denial of employment authorization may constitute irreparable harm in the immigration context.[53] Absent injunctive relief, Petitioner will continue to suffer additional irreparable harm.

C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.

The final two factors for an injunctive relief—the balance of hardships and public

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[51] *Mathews v. Eldridge*, 424 U.S. 319 (1976); *German Santos v. Warden Pike County Correctional Facility*, 965 F.2d 203 (3rd Cir. 2020)[lengthy detention of an alien unconstitutional under the Fifth Amendment]; *Singh v. Holder*, 638 F.3d 1196, 1206-09 (9th Cir. 2011)["substantial liberty interest in prolonged detention"]; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP (W.D. Tex., Oct. 21, 2025), *Slip Op.* 12 and cases cited therein.

[52] *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.

[53] *Pinho v. Gonzales*, 432 F.3d 193, 203 (3rd Cir. 2005) (employment authorization); *Nat'l TPS All. v. Noem*, 150 F.4th 1000, 1025-26 (9th Cir. 2025) (loss of jobs, loss of educational opportunities, family separation); *Doe #1 v. Trump*, 957 F.3d 1050, 1061 (9th Cir. 2020) (prolonged separation from family); *Ariz. Dream Act Coal.*, 757 F.3d 1053, 1068 (9th Cir. 2014) (loss of opportunity to pursue chosen profession).

interest—"merge when the Government is the opposing party."[54] Petitioner faces weighty hardships, namely the deprivation of his liberty, denial of medical care, separation from his wife, and the continued unlawful denial of employment authorization.

Respondents, by contrast, face no hardship. On the contrary, Petitioner's release will spare Respondents additional, unneeded expense associated with his detention. Petitioner will *ultimately* become a lawful permanent resident through his wife. He qualifies for Ukrainian TPS *now*. He therefore has every reason to comply with any requirement or court order and no reason not to.

"[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering."[55] Moreover, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice . . . ."[56] The public interest is served by the faithful execution of the immigration laws, and that interest includes following protections Congress has enacted.[57]

III.
CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant temporary and preliminary injunctive relief, enjoining Respondents from continuing to detain Petitioner, and ordering that Respondents release Petitioner immediately.

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[54] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[55] *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

[56] *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

[57] *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

Respectfully submitted,

/s/ Joseph Reina

JOSEPH REINA
State Bar No. 16754550
Reina & Associates
1140 Empire Central Drive, Suite 300
Dallas, Texas 75247
Telephone: 214-905-9100
Facsimile: 214-905-9510
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on November 19, 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:

1) Civil Chief,
U.S. Attorney,
Northern District of Texas
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699

2) Josh Johnson
Acting Field Office Director,
Immigration and Customs Enforcement
8101 North Stemmons Freeway
Dallas, Texas 75247

3) Pamela Jo Bondi,
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

4) Kristi Noem,
Secretary of Homeland Security
U.S. Department of Homeland Security
245 Murray Lane, SW Mail Stop 0485
Washington, D.C. 20528

/s/ Joseph Reina

Joseph Reina