

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

Danyil Kybukevych,

Petitioner,

v.

Pamela Bondi, Attorney General,

Case No.

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

Department of Homeland Security,

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Miguel Vergara, Director, Harlingen Field
Office Immigration and Customs
Enforcement

and,

Warden of Port Isabel Service Detention
Center.

Respondents.

INTRODUCTION

1. Respondents are detaining Petitioner, Danyil Kybukevych (“Kybukevych” or “Petitioner”), in violation of law.
2. The continued detention of Kybukevych serves no legitimate purpose.
3. To remedy this unlawful detention, Kybukevych seeks declaratory and injunctive relief in the form of immediate release from detention.
4. Pending the adjudication of his Petition, Kybukevych seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration’s (“ICE”) Harlingen, Texas, of the Office of Enforcement and Removal Operations in the State of Texas.
5. Pending the adjudication of this Petition, Kybukevych also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Kybukevych.
6. Kybukevych requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours-notice prior to any removal or movement of him away from the State of Texas.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); U.S. Const. art. I, § 9, cl. 2 (“Suspension Clause”); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), specifically, 8 U.S.C. § 1254a.
8. Because Kybukevych seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this Court.
9. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the U.S. Department of Homeland Security (“DHS”). *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Nielsen v. Preap*, 586 U.S. 392 (2019); *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1209–12 (11th Cir. 2016), *vacated*, 890 F.3d 952 (11th Cir. 2018).
10. Federal district courts have jurisdiction to enforce 8 U.S.C. § 1254a(d)(4). This statute, 8 U.S.C. § 1254a(d)(4), prohibits the detention of individuals maintaining Temporary Protected Status (“TPS”).

11. The statute further provides that individuals who establish *prima facie* eligibility for TPS shall be provided with these benefits until a final determination on their eligibility has been made. 8 U.S.C. § 1254a(a)(4)(B).
12. Federal district courts have jurisdiction to declare if a party is violating the mandate of 8 U.S.C. § 1254a(d)(4) and to order appropriate remedies to cure this violation. 8 U.S.C. § 1254a(d)(4) prohibits the detention of individuals maintaining TPS, and 8 U.S.C. § 1254a(a)(4)(B) provides this benefit to individuals who establish *prima facie* eligibility for TPS.
13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Kybukevych is detained within this District. He is currently detained at the Port Isabel Service Detention Center in Los Fresnos, Texas. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

14. Petitioner Kybukevych is a native and citizen of Ukraine and a resident of King County, Washington.
15. Petitioner entered the United States on March 7, 2023, under Ukrainian humanitarian parole. Petitioner subsequently applied for Temporary Protected Status and re-parole.

16. Petitioner was taken into Immigration and Customs Enforcement (“ICE”) custody on or around May 20, 2025, and has remained in detention since.
17. Petitioner is currently in custody at the ICE detention center in Los Fresnos, Texas.
18. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals (“BIA”) and the immigration judges through the Executive Office for Immigration Review (“EOIR”). Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Kybukevych.
19. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Southern District of Texas, supervises the Harlingen ICE Field Office, and is legally responsible for pursuing Kybukevych’s detention. As such, Respondent Noem is a legal custodian of Kybukevych.
20. Respondent Department of Homeland Security (“DHS”) is the federal agency responsible for implementing and enforcing the INA, including the detention

and removal of noncitizens, including Kybukevych. As such, DHS is a legal custodian of Kybukevych.

21. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, which oversees the detention of aliens in the United States. Mr. Lyons is sued in his official capacity. Defendant Lyons is responsible for Petitioner's detention. As such, Respondent Lyons is a legal custodian of Kybukevych.
22. Respondent Immigration and Customs Enforcement ("ICE") is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens. As such, Respondent ICE is a legal custodian of Kybukevych.
23. Respondent Miguel Vergara is being sued in his official capacity as the Field Office Director for the Harlingen Field Office for ICE within DHS. In that capacity, Field Director Vergara has supervisory authority over the ICE agents responsible for detaining Kybukevych. The address for the Harlingen Field Office is 1717 Zoy Street, Harlingen, Texas 78552, and it is the field office with jurisdiction over Kybukevych's detention in Texas. As such, Respondent Vergara is a legal custodian of Kybukevych.
24. Respondent Warden of the Port Isabel Service Detention Center is being sued in his or her official capacity. Because Petitioner is detained in the Port Isabel

Service Detention Center, under the jurisdiction of the Harlingen Field Office, Respondent has immediate day-to-day control over Petitioner. As such, Respondent Warden of the Port Isabel Service Detention Center is a legal custodian of Kybukevych.

EXHAUSTION

25. No statutory requirement of exhaustion applies to Kybukevych's challenge to the lawfulness of his detention. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.").
26. Kybukevych has exhausted his administrative remedies to the extent possible. His only remedy is by way of this judicial action.
27. Kybukevych has had a pending application for Temporary Protected Status since February 14, 2025, prior to his detention and in compliance with the instructions set forth in the Federal Register.
28. 8 U.S.C. § 1254a(d)(4) is a non-discretionary directive prohibiting the detention of individuals who hold or are *prima facie* eligible for temporary protected status. There is no administrative remedy for compelling compliance with its mandate.

29. No statutory exhaustion requirement applies to Kybukevych's claim of unlawful detention. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only where requesting review of a final removal order).
30. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy*, 503 U.S. at 148, *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).
31. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy*, 503 U.S. at 147. Every day that Kybukevych is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families).

32. Prudential exhaustion is additionally not required in cases where the agency “lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute.” *McCarthy*, 503 U.S. at 147–48.
33. Immigration agencies have no jurisdiction over constitutional challenges of the kind raised here. *See, e.g., Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *In Re Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991).
34. Because requiring Kybukevych to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.
35. 8 U.S.C. § 1254a(d)(4) does not require exhaustion. It is a non-discretionary directive prohibiting the detention of individuals who hold or are *prima facie* eligibility for temporary protected status.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

36. Kybukevych is a native and citizen of Ukraine. *See* Exh. A; Exh. J.

37. On March 7, 2023, Kybukevych the United States under Ukrainian humanitarian parole. *See* Exh. K.
38. Kybukevych has not exited the United States since he entered the United States on March 7, 2023.
39. Kybukevych's humanitarian parole was valid through March 5, 2025. *See* Exh. K.
40. On October 31, 2024, Kybukevych timely filed an application to extend his Ukrainian humanitarian parole. *See* Exh. E.
41. On November 7, 2024, USCIS issued a notice that it would reuse Kybukevych's previously captured fingerprints and other biometrics for Kybukevych's re-parole application and that a biometrics appointment would not be necessary. *See* Exh. F.
42. As of October 23, 2025, Kybukevych's application for extension of his humanitarian parole remains pending. *See* Exh. M.
43. On April 19, 2022, Respondents designated Ukraine for Temporary Protected Status ("TPS"). *See* Designation of Ukraine for Temporary Protected Status, 87 Fed. Reg. 23211 (Apr. 19, 2022). This initial designation lasted until October 19, 2023. *See id.*

44. On August 21, 2023, Respondents extended the TPS designation for Ukraine. *See* Extension and Redesignation of Ukraine for Temporary Protected Status, 88 Fed. Reg. 56872 (Aug. 21, 2023).
45. On January 17, 2025, Respondents extended the TPS designation for Ukraine, effective from April 20, 2025, through October 19, 2026. *See* Extension of the Designation of Ukraine for Temporary Protected Status, 90 Fed. Reg. 5936 (Jan. 17, 2025).
46. To qualify for TPS, Ukrainians must have continuous residence in the United States since August 16, 2023; continuous physical presence in the United States since October 20, 2023; and no disqualifying criminal history or grounds of inadmissibility. *See* 8 U.S.C. § 1254a(c)(1)–(3); Extension and Redesignation of Ukraine for Temporary Protected Status, 88 Fed. Reg. 56872, 56872 (Aug. 21, 2023).
47. Kybukevych has continuously resided in the United States from March 7, 2023, to the present. *See* Exh. K.
48. Kybukevych has been continuously present in the United States from March 7, 2023, to the present. *See* Exh. K.
49. Kybukevych has no disqualifying criminal activity for TPS.
50. Kybukevych has no disqualifying grounds of inadmissibility for TPS. *See* Exh. A; Exh. B.

51. On February 14, 2025, before his humanitarian parole expired, Kybukevych timely filed an I-821 Application for Temporary Protected Status. *See* Exh. G.
52. On February 14, 2025, USCIS issued a notice that it would reuse Kybukevych's previously captured fingerprints and other biometrics for Kybukevych's TPS application and that a biometrics appointment would not be necessary. *See* Exh. H.
53. Kybukevych is *prima facie* eligible for Temporary Protected Status because Respondents have already adjudicated him to be a Ukrainian national when they granted him Ukrainian humanitarian parole. *See* Exh. I.
54. Respondents already know that Kybukevych meets the continuous and physical presence requirements for TPS because Respondents paroled him into the country before the pertinent dates. *See* Exh. K.
55. Respondents already have Kybukevych's biometrics and indicated that another biometrics appointment is not necessary; and Kybukevych has no disqualifying criminal history. *See* Exh. H.
56. As of October 23, 2025, Kybukevych's application for Temporary Protected Status remains pending. *See* Exh. L.
57. Kybukevych is in a period of authorized stay in the United States because of his timely-filed pending TPS and re-parole applications.

58. On or around May 21, 2025, Kybukevych was traveling through Texas. Respondents encountered him and detained him despite his pending applications for Temporary Protected Status and Ukrainian humanitarian parole extension for which he is *prima facie* eligible. *See* Exh. C; Exh. D.
59. Respondents served its Notice to Appear on Kybukevych, initiating removal proceedings. *See* Exh. A.
60. Kybukevych remains detained in the State of Texas. *See* Exh. Q.

LEGAL FRAMEWORK: TPS & DETENTION

61. “An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-
- (i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or
 - (ii) the alien is described in section 1158(b)(2)(A) of this title.
- 8 U.S.C. § 1254a(c)(2)(B).
62. “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.” 8 U.S.C. § 1254a(d)(4) (emphasis added).
63. “Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.” 8 U.S.C. § 1254a(d)(1).

64. In the absence of the termination of TPS, “such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period.” 8 U.S.C. § 1254a(d)(2).

65. 8 U.S.C. § 1254a(d)(4) is clear. It provides

Detention of alien

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.**

66. “In the case of an alien who establishes a prima facie case of eligibility for [TPS] benefits...until a final determination with respect to the alien’s eligibility for such [TPS] benefits has been made, the alien shall be provided such benefits.” 8 U.S.C. § 1254a(a)(4)(B).

67. Respondents are violating 8 U.S.C. § 1254a(d)(4) because Kybukevych’s *prima facie* eligibility under 8 U.S.C. § 1254a(a)(4)(B) means that Kybukevych is provided the benefits of Temporary Protected Status pending a final determination of his TPS application.

68. Respondents’ detention of Kybukevych is in violation of the plain language of the Immigration & Nationality Act.

REMEDY

69. Respondents’ detention of Kybukevych violates 8 U.S.C. § 1254a(d)(4).

70. Kybukevych seeks immediate release from custody.
71. Kybukevych seeks a declaratory judgement that Respondent violated 8 U.S.C. § 1254a(a)(4)(B) and 8 U.S.C. § 1254a(d)(4).
72. Respondent has denied Kybukevych all rights available to him under 8 U.S.C. § 1254a as a *prima facie* Temporary Protected Status beneficiary.
73. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) (“A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus”), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), *judgment entered*, No. 07A1011, 2008 WL 11579668 (U.S. June 19, 2008) (“[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.”).
74. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) (“The typical remedy for [unlawful executive detention] is, of course, release.”).
75. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, “habeas corpus is, at its core, an equitable remedy,”

Schlup v. Delo, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts “[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters ‘as law and justice require.’” *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under courts’ broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (“Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien’s release.”).

76. Immediate release is an appropriate remedy in this case.

CAUSE OF ACTION

COUNT ONE: VIOLATION OF 8 U.S.C. § 1254a(d)(4).

77. Kybukevych re-alleges and incorporates by reference the paragraphs above.
78. 8 U.S.C. § 1254a governs the treatment of TPS holders and individuals who establish *prima facie* eligibility for TPS, including their detention and removal under federal immigration law.
79. 8 U.S.C. § 1254a(a)(4)(B) states that individuals who establish *prima facie* eligibility for TPS shall be provided with the benefits under 8 U.S.C. § 1254a until a final determination on their eligibility has been made. 8 U.S.C. § 1254a(a)(4)(B).

80. Kybukevych's detention is in violation of 8 U.S.C. § 1254a(d)(4). 8 U.S.C. § 1254a(d)(4) states "[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." (emphasis added). There is no exception to this rule provided in the statute.
81. Respondent must release Kybukevych without any conditions, including bond or other monitoring requirements.

COUNT TWO: DECLARATORY RELIEF

82. Kybukevych re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
83. Kybukevych requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that 8 U.S.C. § 1254a(d)(4) prohibits his detention.
84. Kybukevych requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that he is eligible for release from Respondents' custody.

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

85. Kybukevych re-alleges and incorporates by reference the paragraphs above.
86. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

87. Kybukevych's detention is forbidden and therefore unreasonable under 8 U.S.C. § 1254a(d)(4) and in violation of the Fifth Amendment's guarantee of due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Danyil Kybukevych, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153 and the continued detention of Kybukevych is contravention of the plain language of 8 U.S.C. § 1254a
3. Order Respondents to show cause for their continued detention of Kybukevych.
4. Issue an order restraining Respondents from attempting to move Kybukevych from the State of Texas during the pendency of this petition;
5. Issue an order requiring Respondents to provide 72-hour notice of any intended movement of Kybukevych;
6. Order Kybukevych's immediate release.
7. Declare that Kybukevych's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1254a.

8. Declare that Kybukevych's detention violates the Due Process Clause of the Fifth Amendment.
9. Enjoin Respondents from further detaining Kybukevych so long as TPS for Ukraine remains in effect and he continues to await final adjudication of his TPS application for which he is *prima facie* eligible.
10. Grant Kybukevych reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
11. Grant any and all further relief this Court deems just and proper.

DATED: October 23, 2025

Respectfully submitted,

/s/ Amanda Waterhouse

Amanda Waterhouse

State Bar of Texas No. 24047676

Southern District of Texas ID No. 1102710

Waterhouse Dominguez & Strom, PLLC

PO Box 671067

Houston, Texas 77267

(713) 930-1430

awaterhouse@wdslawyers.com

Local Counsel

/s/ David L. Wilson

David L. Wilson

MN Attorney Lic. No. 0280239

Wilson Law Group

3019 Minnehaha Avenue

Minneapolis, Minnesota 55406

(612) 436-7100

dwilson@wilsonlg.com

Pro Hac Vice Counsel

Attorneys for Petitioner

**Verification by
Petitioner Pursuant to 28 U.S.C. § 2242**

I am submitting this verification because I am the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge.

/s/ Danyil Kybukevych
Danyil Kybukevych

October 23, 2025