

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MYKYTA DMYTRENKO,

Petitioner,

v.

MARY DE ANDA-YBARRA, Field Office
Director of Enforcement and Removal Operations,
El Paso Field Office, Immigration and Customs
Enforcement; Warden of ERO El Paso Camp East
Montana;

TODD M. LYONS, *in his official capacity* as
Acting Director, Immigration and Customs
Enforcement, U.S. Department of Homeland
Security;

KRISTI NOEM, *in her official capacity* as
Secretary, U.S. Department of Homeland Security;

and

PAMELA JO BONDI, *in her official capacity* as
Attorney General of the United States;

Respondents.

C/A No. 3:26-cv-00105

VERIFIED
PETITION FOR WRIT
OF HABEAS CORPUS
AND COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE
RELIEF

Agency #



INTRODUCTION

1. Petitioner-Plaintiff ("Petitioner") is a citizen of Ukraine. He entered the United States in 2023 with humanitarian parole and has since established his permanent residence and livelihood in this country.

2. On information and belief, Petitioner was apprehended by immigration authorities in Minnesota on January 9, 2026. He was then transferred to this jurisdiction. He remains in immigration detention pending removal proceedings.
3. Petitioner is currently detained at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.
4. The continued detention of Dmytrenko serves no legitimate purpose.
5. To remedy this unlawful detention, Dmytrenko seeks declaratory and injunctive relief in the form of immediate release from detention.

CUSTODY

6. Petitioner is currently in the custody of Immigration and Customs Enforcement (“ICE”) at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936. He is therefore in “‘custody’ of [the DHS] within the meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
9. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging both the lawfulness and the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless, for good cause, additional time, not exceeding twenty days, is allowed.” *Id.*
11. Petitioner is “in custody” for the purpose of § 2241 because Petitioner was detained by Respondents.

VENUE

12. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because Petitioner is currently detained in El Paso, at the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. *See Fuller v. Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir 2000).
14. No statutory requirement of exhaustion applies to Dmytrenko'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.").
15. Dmytrenko has exhausted his administrative remedies to the extent possible. His only remedy is by way of this judicial action.
16. Dmytrenko has had a pending application for Temporary Protected Status since January 27, 2025, prior to his detention and in compliance with the instructions set forth in the Federal Register.
17. 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.

18. No statutory exhaustion requirement applies to Dmytrenko'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).
19. 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).
20. 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 Dmytrenko 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).

21. 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.
22. 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).
23. Because requiring Dmytrenko 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.
24. 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.

PARTIES

25. Petitioner is from Ukraine and has resided in the United States since 2023. He is currently detained in the ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936.
26. Respondent Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement and Warden of ERO El Paso Camp East Montana, is sued in her official capacity. Respondent De Anda-Ybarra is a legal custodian of Petitioner.
27. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
28. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the U.S. Department of Homeland Security, the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.
29. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States. As Attorney General, she has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

LEGAL BACKGROUND AND ARGUMENT

Temporary Protected Status

30. “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).

31. “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).

32. “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).

33. 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).

34. 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.**

35. “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).
36. Respondents are violating 8 U.S.C. § 1254a(d)(4) because Dmytrenko's *prima facie* eligibility under 8 U.S.C. § 1254a(a)(4)(B) means that Dmytrenko is provided the benefits of Temporary Protected Status pending a final determination of his TPS application.
37. Respondents' detention of Dmytrenko is in violation of the plain language of the Immigration & Nationality Act.

Due Process

38. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear in immigration court or the person is a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
39. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due

Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. at 690. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

40. Parolees have a weighty liberty interest under the Due Process Clause. The Supreme Court has noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
41. “[T]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Morrissey v. Brewer*, 408 U.S. at 482. The Court explained that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.” *Id.*
42. Petitioner lived up to the parole conditions. He submitted a timely application for re-parole and for Temporary Protected Status.
43. “Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment,

the greater the procedural safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82).

STATEMENT OF FACTS

44. Petitioner is a citizen of Ukraine.
45. On May 22, 2023, Petitioner the United States under Ukrainian humanitarian parole.
46. Petitioner has not exited the United States since he entered the United States on May 22, 2023.
47. Petitioner’s humanitarian parole was valid through May 20, 2025.
48. On January 9, 2025, Petitioner timely filed an application for re-parole.
49. On October 29, 2025, Petitioner completed biometrics for his pending application for re-parole.
50. As of January 20, 2026, Petitioner’s application for re-parole remains pending.
51. 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.

52. 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).
53. 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).
54. 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).
55. Petitioner has continuously resided in the United States from May 22, 2023, to the present.
56. Petitioner has been continuously present in the United States from May 22, 2023, to the present.
57. Petitioner has no disqualifying criminal activity for TPS.
58. Petitioner has no disqualifying grounds of inadmissibility for TPS.

59. On January 27, 2025, before his humanitarian parole expired, Petitioner timely filed an I-821 Application for Temporary Protected Status.
60. Upon information and belief, USCIS issued a notice that it would reuse Petitioner's previously captured fingerprints and other biometrics for Petitioner's TPS application and that a biometrics appointment would not be necessary.
61. Petitioner 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.
62. Respondents already know that Petitioner meets the continuous and physical presence requirements for TPS because Respondents paroled him into the country before the pertinent dates.
63. Respondents already have Petitioner's biometrics and indicated that another biometrics appointment is not necessary; and Petitioner has no disqualifying criminal history.
64. As of January 20, 2026, Petitioner's application for Temporary Protected Status remains pending.
65. Petitioner is in a period of authorized stay in the United States because of his timely-filed pending TPS and re-parole applications.

66. On or around January 9, 2026, Respondents detained Petitioner in Minnesota during at-large Operation Metro Surge enforcement and subsequently moved him to El Paso, Texas.

67. Respondents served its Notice to Appear on Petitioner, initiating removal proceedings.

68. Petitioner remains detained in the State of Texas.

REMEDY

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

70. Dmytrenko seeks immediate release from custody.

71. Dmytrenko 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 Dmytrenko 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. Dmytrenko 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. Dmytrenko'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 Dmytrenko without any conditions, including bond or other monitoring requirements.

COUNT TWO

Declaratory Relief

82. Dmytrenko re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
83. Dmytrenko requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that 8 U.S.C. § 1254a(d)(4) prohibits his detention.
84. Dmytrenko 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 to the U.S. Constitution – Temporary

Protected Status Applicants

85. Dmytrenko 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. Dmytrenko'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.

COUNT FOUR

Violation of the Fifth Amendment to the U.S. Constitution – Parolees

88. Dmytrenko re-alleges and incorporates by reference the paragraphs above.
89. Petitioner's continued detention violates his right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.
90. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest.
91. 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.
92. Due process asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. Petitioner is in civil immigration detention.
93. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

94. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community.
95. Petitioner's detention is also punitive and bears no "reasonable relation" to any legitimate purpose for detaining him. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("nature and duration" of civil confinement must "bear some reasonable relation to the purpose for which the individuals is committed"); *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). His "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).
96. Because of Petitioner's profound legal interest in his liberty as a parolee, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

97. Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment.

COUNT FIVE

**Violation of the Fourth Amendment to the U.S. Constitution,
8 U.S.C. § 1357(a)(2), and 8 C.F.R. § 287.3(d)
Unlawful Arrest**

98. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.
99. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).
100. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual.'" *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (quoting *Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the

form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.*

101. It must, however, occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstance. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).
102. There is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Specifically, an officer must have probable cause to believe the person is violating the immigration laws *and* that the person “is likely to escape before a warrant can be obtained,” *i.e.*, is a flight risk. *Id.*; *see also Ramirez Ovando*, 2025 WL 3293467, at *2. Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).
103. Petitioner’s warrantless arrest occurred without probable cause that Petitioner posed a flight risk. “Courts have ... made the self-evident finding that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties.” *Escobar Molina v. U.S. Dep’t of Homeland Sec.*, No. CV 25-3417 (BAH), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (collecting cases).

104. At the moment of Petitioner's seizure, Petitioner was living at a stable home address and had been in the United States for years. Petitioner has built ties to his community. Petitioner fully complied with the ICE officers and in no way tried to disobey or flee. Therefore, no officer could have probable cause that Petitioner was likely to escape before a warrant could be obtained.
105. Without a statutory basis to arrest, Respondents were required under the Fourth Amendment to secure a prompt judicial probable cause determination to continue holding Petitioner. *Gerstein*, 420 U.S. at 114; *McLaughlin*, 500 U.S. at 56–57. Petitioner received no such judicial determination, yet his detention continued well beyond 48 hours, rendering it presumptively unconstitutional.
106. Regulations also provide that noncitizens arrested without a warrant must receive a custody determination within 48 hours of the arrest, unless there is “an emergency or other extraordinary circumstance” that requires “an additional reasonable period of time” to make the custody determination. 8 C.F.R. § 287.3(d).
107. During that custody determination, the immigration officer must make findings as to whether “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. §§

236.1(c)(8), 1236.1(c)(8). Similarly, upon information and belief, Petitioner has received no such custody determination.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will:

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 Dmytrenko is contravention of the plain language of 8 U.S.C. § 1254a.
3. Order Respondents to show cause for their continued detention of Dmytrenko.
4. Issue an order restraining Respondents from attempting to move Dmytrenko 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 Dmytrenko;
6. Order Dmytrenko's immediate release.
7. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody because Respondents did not detain Petitioner with a warrant of arrest.
8. Declare that Dmytrenko's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1254a.

9. Declare that Dmytrenko's detention violates the Due Process Clause of the Fifth Amendment.
10. Enjoin Respondents from further detaining Dmytrenko 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.
11. Grant Dmytrenko reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
12. Grant any and all further relief this Court deems just and proper.

Respectfully submitted,

/s/ David L. Wilson

January 20, 2026

David L. Wilson

Minnesota Attorney Bar ID #0280239

Wilson Law Group

3019 Minnehaha Avenue

Minneapolis, Minnesota 55406

Tel: (612) 436-7100

Email: dwilson@wilsonlg.com

Admitted to the Western District of Texas

Attorney for the Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Mykyta Dmytrenko, and submit this verification on his behalf.

I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this Tuesday, January 20, 2026.

/s/David L. Wilson
DAVID L. WILSON