

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

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JOSE IGNACIO DE LA CRUZ DE LA ROSA,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 2:25-cv-00580
	)	
DONALD J. TRUMP, in his official capacity as	)	
President of the United States; PATRICIA HYDE,	)	
in her official capacity as Acting Boston Field Office	)	
Director, Immigration and Customs Enforcement,	)	
Enforcement and Removal Operations; DAVID W.	)	
JOHNSTON, in his official capacity as Vermont	)	
Sub-Office Director of Immigration and Customs	)	
Enforcement, Enforcement and Removal Operations;	)	
TODD M. LYONS, in his official capacity as Acting	)	
Director, U.S. Immigration and Customs	)	
Enforcement; PETE R. FLORES, in his official	)	
capacity as Acting Commissioner for U.S. Customs	)	
and Border Protections; KRISTI NOEM, in her	)	
official capacity as Secretary of the United States	)	
Department of Homeland Security; MARCO	)	
RUBIO, in his official capacity as Secretary of State;	)	
and PAMELA BONDI, in her official capacity as	)	
U.S. Attorney General,	)	
	)	
Respondents.	)	
_____	)	

**RESPONDENTS' OPPOSITION TO  
PETITIONER'S REQUEST FOR BAIL**

The Court should deny Petitioner Jose Ignacio De La Cruz De La Rosa's request for bail pending adjudication of his petition for a writ of habeas corpus. *See* ECF No. 1 ¶¶ 57-61. First, the Court is barred from exercising habeas jurisdiction pursuant to the Immigration and Nationality Act (INA); it therefore lacks inherent authority to release Petitioner under *Mapp v. Reno*, 241 F.3d 222, 223 (2d Cir. 2001). Second, even if the Court exerts habeas jurisdiction, the Court nonetheless lacks authority to grant bail. Third, Petitioner cannot meet the difficult standard for bail pending

habeas litigation because he has not raised substantial claims for the reasons described in Respondents' Opposition to Petition for Habeas Corpus and Motion to Dismiss. *See* ECF No. 15. Petitioner also fails to raise a substantial Fourth Amendment claim because the investigative stop conducted by Border Patrol Agents (BPAs) was reasonable and, even if it were not, Petitioner's identity is not subject to suppression. Finally, Petitioner has also not established extraordinary circumstances required for bail in this context, particularly because he cannot establish he does not present a flight risk or danger. The Court should therefore deny Petitioner's request for bail.

### **BACKGROUND**

#### **A. THE JUNE 14, 2025 ENCOUNTER BETWEEN PETITIONER AND BORDER PATROL AGENTS.**

While on patrol on June 14, 2025, shortly after 12:00 p.m. Border Patrol Agent Parent encountered a large capacity passenger van travelling south down Drew Road, a rural road that dead-ends at the international border with Canada less than a mile away to the north. Ex. F Application for Search Warrant, *In re One Black Samsung Phone in the Possession of the United States Border Patrol in Richford, Vermont*, No. 25-MJ-85, Attach. A ¶¶ 16, 17, 20 (D. Vt. June 20, 2025); Ex. C, BPA Parent Form G-166C at 1-2; *see also* Ex. H, Decl. of Danil Deresh ¶ 3 & Exs. 1-5. BPA Parent was familiar with the few residences on Drew Road and did not recognize the vehicle as belonging to any of them. Ex. F ¶ 20; Ex. C at 2. Furthermore, the area around Drew Road has previously been used as a location for illegal border crossings into the United States. *See* Ex. F ¶ 18; Ex. C at 1. And, last year, one such smuggling event on Drew Road involved a similar large passenger van that picked up migrants who had illegally entered the United States. *See* Ex. H, Decl. of Danil Deresh ¶¶ 4-5 & Exs. 1-5; Ex. F ¶ 18; Ex. C at 2.

When the driver and the front seat passenger of the van saw BPA Parent's marked Border Patrol vehicle on June 14 they became visibly nervous. *See* Ex. F ¶ 21; Ex. C at 2. The driver also

failed to make a full stop at the end of Drew Road before entering the intersection, which was not consistent with normal local traffic patterns. Ex. F ¶ 22; Ex. C at 2. Furthermore, the occupants did not acknowledge BPA Parent, which was also inconsistent with local residents' interactions with BPAs. Ex. F ¶ 23; Ex. C at 2.

BPA Parent began to follow the van. Ex. F ¶ 26; Ex. C at 2. While difficult to observe through the van's tinted windows, BPA Parent saw what he thought were additional individuals in the back of the van. Ex. F ¶ 26; Ex. C at 2. BPA Parent requested a registration check on the van's Vermont license plate, and confirmed that the van was registered to Jose Ignacio De La Cruz De La Rosa out of Milton, Vermont. Ex. F ¶ 29; Ex. C at 3. Recent intelligence indicated that smugglers were possibly using vehicles with Vermont plates to blend in with local traffic, though these vehicles were typically registered at larger cities further south from the border. Ex. F ¶ 30; Ex. C at 3.

BPA Parent initiated a traffic stop. Ex. F ¶ 31; Ex. C at 3. BPA Parent approached the driver's window, which was rolled down only a few inches. Ex. F ¶ 33; Ex. C at 3. BPA Parent asked that the driver roll down the window, but the driver refused to do so. Ex. F ¶ 33; Ex. C at 3. BPA Parent identified himself as a border patrol agent and asked the driver for his license in English and Spanish. Ex. F ¶¶ 34-35; Ex. C at 3. BPA Parent also asked the driver his citizenship and if he had immigration documents to show his lawful status. Ex. F ¶ 36; Ex. C at 3. Throughout BPA Parent's attempt to speak with the occupants, the driver refused to roll down the window and was speaking in a low tone and rapid pace, such that BPA Parent could not understand. Ex. F ¶ 36; Ex. C at 3. Two additional agents, Supervisory BPA (SBPA) Blaser and BPA Haffly, arrived. Ex. F ¶ 37; Ex. C at 4. They both also unsuccessfully attempted to speak with the occupants to conduct an immigration inspection. Ex. F ¶ 37; Ex. C at 4; Ex. D, BPA Haffly Form G-166C at 2; Ex. E,

SBPA Blaser Form G-166C at 1. The occupants of the van were also simultaneously attempting to make phone calls. Ex. F ¶ 38; Ex. C at 4; Ex. D at 1; Ex. E at 2. All of the BPAs' attempts to gain identification from the occupants of the van failed because the occupants refused to identify themselves. Ex. F ¶ 38; Ex. C at 4; Ex. D at 2. BPA Parent requested from dispatch an immigration, criminal history, and warrant checks for the vehicle's registered owner. Ex. F ¶ 39; Ex. C at 4.

SBPA Blaser directed the driver to exit the vehicle and warned both occupants that he would break the window and remove them. Ex. D at 2; Ex. E at 2. SBPA Blaser then broke the driver's window in order to remove the occupants from the vehicle. Ex. F ¶¶ 40-43; Ex. C at 4; Ex. D at 2; Ex. E at 2. After they were out of the vehicle, both occupants continued to refuse to answer any questions, and the driver shook his head at the passenger, which appeared to signal to her not to answer any questions. Ex. F ¶¶ 42, 44; Ex. C at 4. Both occupants were placed in handcuffs. Ex. F ¶¶ 44; Ex. C at 4; Ex. D at 2.

Dispatch advised BPA Parent that the registered owner of the vehicle had an encounter at a Border Patrol checkpoint in Del Rio Texas in 2022, but had no determinable legal status in the United States. Ex. F ¶ 45; Ex. C at 4; Ex. D at 2. The driver and passenger were then transported to the Richmond Border Patrol Station for further investigation. Ex. F ¶ 46; Ex. C at 4; Ex. D at 2; Ex. E at 3. Border patrol officers determined the driver was Jose Ignacio De La Cruz De La Rosa, who was a citizen of Mexico and had been previously removed twice. Ex. D at 3; Ex. E at 3.

A border patrol officer issued De La Cruz De La Rosa a Warrant of Arrest and Notice to Appear charging him with being present in the United States without being admitted or paroled, or who arrived in the United States at an undesignated time or place. Ex. D at 3; Ex. E at 3; Ex. A, Warrant of Alien Arrest; Ex. B, Notice to Appear. He remains detained at Northwest State

Correctional Center in Vermont. ECF No. 15-1, Decl. of Assistant Field Officer Director Keith Chan ¶ 4.

**B. PETITIONER’S IMMIGRATION HISTORY AND PROCEDURAL BACKGROUND.**

After he was detained on June 14, 2025, Petitioner filed this habeas action seeking his release on June 15, 2025. ECF No. 1. In his Petition, he admits he is a Mexican citizen who has twice entered the United States unlawfully. *See id.* ¶ 2. He asserts his detention violates the First, Fourth, and Fifth Amendments of the Constitution. *Id.* ¶¶ 36-56. He also requested release on bail pending adjudication of his claims. *Id.* ¶¶ 57-61. With respect to his bail request, Petitioner contends “he will be unable to speak freely, ratifying the ultimate constitutional violation that the government sought to achieve with his detention,” *id.* ¶ 60, and that “he will be punished for his Mexican-descent and disfavored speech, ratifying another constitutional violation that the government sought to achieve with his detention,” *id.* ¶ 61.

Also on June 16, 2025, Petitioner filed a motion for a temporary restraining order to prevent him from being transferred out of this district, ECF. No. 2, which the Court granted the same day, ECF No. 5. The Court also issued an Order to Show Cause why a writ of habeas corpus should not be granted, ECF No. 7, to which Respondents responded on June 30, 2025, ECF No. 15. A bail hearing is scheduled for July 8, 2025. ECF No. 11. On July 6, 2025, Petitioner filed a Motion for Release Under *Mapp v. Reno*. ECF No. 16.

**ARGUMENT**

**I. THE COURT LACKS AUTHORITY TO GRANT BAIL.**

As a threshold issue, because the Court lacks jurisdiction over the Petition, it also lacks jurisdiction to order bail pending adjudication of that Petition. Specifically, 8 U.S.C. §§ 1226(e)

and 1252(a)(5), (b)(9), and (g) divest the Court of jurisdiction. ECF No. 12, at 6-7.<sup>1</sup> Congress created a singular path for aliens to raise challenges related to removal. That path preserves Article III judicial review by way of a petition for review to the appropriate court of appeals. The district court has no role to play in the process. These jurisdictional bars also confirm that the district court lacks the authority to order release under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). Furthermore, *Mapp*, a case that was published prior to Congress expanding the jurisdictional limits to review immigration matters in the REAL ID Act, no longer remains good law. See REAL ID Act, P.L. 109-13, at §§ 106(a)(1)-(3) (amending 8 U.S.C. § 1252 to specify no district court jurisdiction under 28 U.S.C. § 2241 to review challenges arising from removal proceedings).

*Mapp* recognized that federal courts have “inherent authority to admit to bail” but “this power is a limited one, to be exercised in special cases only.” 241 F.3d at 226. Prior to passage of the REAL ID Act of 2005, aliens could seek review of their removal orders through the filing of a habeas petition in federal district court. See, e.g., *INS v. St. Cyr*, 533 U.S. 289, 311-14 (2001). The REAL ID Act removed habeas as a permissible avenue for challenging a removal order, stripped district courts of jurisdiction to review removal orders, and vested the courts of appeals with exclusive jurisdiction to review challenges to final removal orders. See 8 U.S.C. § 1252(a)(5). In *Mapp*, the Second Circuit also recognized that district courts could not override a statute to grant relief. 241 F.3d at 227-29. Because a statute applies here, *Mapp* cannot create authority that is otherwise limited by statute. Therefore, *Mapp* no longer remains good law.

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<sup>1</sup> Respondents acknowledge the extent to which the INA bars district court review of detention associated with immigration proceedings through a habeas petition is currently pending in the government’s appeals from this Court’s decisions in the *Ozturk* and *Mahdawi* cases. See *Ozturk v. Hyde, et al.*, 136 F.4th 382 (2d Cir. 2025) (motions panel decision denying motion for stay pending appeal); *Mahdawi v. Trump et al.*, 136 F.4th 443 (2d Cir. 2025) (same). Both appeals are subject to expedited briefing schedules.

Indeed, in *Mapp*, the Second Circuit specifically recognized that a court's inherent authority to consider bail for habeas petitioners, "may well be subject to appropriate limits imposed by Congress," and that, at the time *Mapp* was decided, "Congress has not, to date, curtailed this feature of federal judicial power[.]" *Id.* at 223. The court "acknowledge[d] that, in cases involving challenges to [ICE] detention, Congress's plenary power over immigration matters renders this authority readily subject to congressional limitation." *Id.* at 231. No such limitation was at issue in *Mapp*, but here, in addition to the REAL ID Act's jurisdiction-limiting provisions, 8 U.S.C. § 1226(e) is also an "express statutory constraint[]" that limits the Court's authority in this context. *Mapp*, 241 F.3d at 231.

Section 1226(e) restricts this Court's authority in two ways. First, Section 1226(e) provides a "clear direction from Congress," *id.* at 227, that "[n]o court may set aside any action or decision by [ICE] under [§ 1226] regarding the detention or release of any alien," 8 U.S.C. § 1226(e). Thus, this Court lacks authority to grant interim release to a habeas petitioner who is subject to detention under § 1226(a). Second, ICE's discretionary decision to detain the petitioner cannot readily be set aside through a *Mapp* motion. As explained in *Mapp*, where Congress provided for discretionary detention, federal courts may be further constrained from granting release on bail where the agency has exercised such discretion. *See Mapp*, 241 F.3d at 229 n.12 ("[W]hile it may be the case that had the INS exercised its discretion under § 1231(a)(6) and decided not to release *Mapp* on bail, we would be required to defer to its decision, where there has been no such consideration of a detainee's fitness for release, deference to the INS . . . is not warranted."); *see also Cinquemani v. Ashcroft*, 2001 WL 939664, at \*6-8 & n.6 (E.D.N.Y. Aug. 16, 2001) (citing *Mapp*). And the Second Circuit has indeed recognized the jurisdictional limitation contained in Section 1226(e), and it applies here where Petitioner challenges the initial decision to detain him.

*See Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that § 1226(e) did not bar review because the petitioner did not challenge “his initial detention”). Thus, it would be wrong to supplant ICE’s discretionary decision to detain in this context.

Accordingly, this Court is precluded from considering *Mapp* to release Petitioner from detention. *Mapp*, 241 F.3d at 227-29; accord *Bolante v. Keisler*, 506 F.3d 618, 620-21 (7th Cir. 2007) (“Even if in the absence of legislation a federal court could grant bail to an alien challenging a removal order, it cannot do so if Congress has forbidden it.”).

## **II. PETITIONER CANNOT MEET MAPP’S DIFFICULT STANDARD.**

But even if the Court decides to exercise jurisdiction and consider Petitioner’s request for bond, the motion should still be denied because he cannot demonstrate why bail is appropriate under *Mapp*. “[A] court considering a habeas petitioner’s fitness for bail must inquire into whether the habeas petition raises substantial claims and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective.” *Mapp*, 241 F.3d at 230 (cleaned up). This standard “is a difficult one to meet[.]” as the Second Circuit has cautioned that the power to grant bail to habeas petitioners “is a limited one, to be exercised in special cases only.” *Id.* at 226 (cleaned up). “‘The petitioner bears the burden of demonstrating both the ‘substantial questions’ and the ‘exceptional circumstances’ required’ under *Mapp*.” *Mahdawi v. Trump*, 2025 WL 1243135, at \*8 (D. Vt. Apr. 30, 2025) (quoting *Swerbiolov v. United States*, 2005 WL 1177938, at \*2 (E.D.N.Y. May 18, 2005)).

### **A. No Extraordinary Circumstances Make the Grant of Bail Necessary to Make the Habeas Remedy Effective.**

Petitioner has not alleged any “extraordinary circumstances.” While Petitioner alleges constitutional violations, “[a]n alleged violation of a constitutional right does not constitute an ‘extraordinary circumstance’ because such a circumstance does not, on its own, distinguish a

petitioner's case from other habeas cases." *Calix v. United States*, 2024 WL 4635451, at \*5 (S.D.N.Y. Oct. 31, 2024); *see also Iuteri v. Nardoza*, 662 F.2d 159, 162 (2d Cir. 1981) (finding no extraordinary circumstances when there was "nothing unusual" about petitioner's claim that his incarceration "would have been without basis" because "[v]irtually all habeas corpus petitioners argue that their confinement is unlawful"). Petitioner specifically argues that the circumstances are extraordinary because of the chilling effect on his protected speech and his community's protected speech. ECF No. 16 at 29. However, because he admits that he is here unlawfully, ECF No. 1 ¶ 2, Petitioner has not plausibly alleged that he would not have been detained but-for Respondent's allegedly retaliatory motive, *see* ECF No. 15 at 8-9. Accepting Petitioner's contention that a potential chilling effect justifies his release would create a precedent that anyone in the United States unlawfully could use the habeas remedy to escape lawful detention pending removal proceedings so long as they have at some point engaged in protected speech.

Furthermore, the cases Petitioner cites to support his contention of extraordinary circumstances are inapt, as he has not alleged that he is suffering from severe health issues. *Cf. Coronel v. Decker*, 449 F. Supp. 3d 274, 289 (S.D.N.Y. 2020) ("Severe health issues have been the prototypical but rare case of extraordinary circumstances that justify release pending adjudication of habeas."); *D'Alessandro v. Mukasey*, 2009 WL 799957, at \*4 (W.D.N.Y. Mar. 25, 2009) (extraordinary circumstances exist when petitioner was not seen by a physician for multiple chronic health issues until sixteen months after he was admitted to the facility). Therefore, Petitioner's request for bond must be denied because he has not established extraordinary circumstances that make the grant of bail necessary to make the habeas remedy effective.

Additionally, detention pending removal proceedings is not extraordinary here, where Petitioner cannot establish that he does not present a danger or risk of non-appearance. First,

Plaintiff has been previously removed twice. *See* Ex. E at 3. Second, while the government acknowledges that Petitioner has not been convicted of criminal offenses, law enforcement has determined that the phone number associated with Petitioner's phone has been used recently in connection with efforts to coordinate a human smuggling event. *See* Ex. F ¶¶ 6-15, 47-50. Specifically, Petitioner's cell phone was assigned a number used by an individual who was referred to as "Nacho." *Id.* ¶¶ 47-50. On or around April 10, the "Nacho Number" communicated with an individual who was attempting to enter the United States unlawfully regarding a pick-up location in the United States. *Id.* ¶¶ 9-10. Other communications on the individual's phone also indicated that "Nacho" was involved in the payments related to the efforts to bring the individual to the United States unlawfully, *id.* ¶ 8, that "Nacho" would pick-up the individual in the United States, *id.* ¶¶ 8, 10, 12, and that he was doing everything to make sure that they would be okay, *id.* ¶ 13. Open-source reporting has indicated that that Petitioner uses the name "Nacho." *See* ¶ 50. Because this evidence established probable cause to believe the Petitioner was involved in a human smuggling event, *id.* at 17-18, his detention pending removal proceedings is not extraordinary here, where he cannot establish he does not present a danger or risk of non-appearance.

**B. Petitioner Has Not Raised Substantial Claims.**

In addition, for the reasons discussed in Respondents' Opposition to Petition For Habeas Corpus and Motion to Dismiss, ECF No. 15, Petitioner's request for bond must be denied because, having admitted he entered the United States unlawfully, he has not raised a substantial claim that he is being detained unlawfully.

**1. Detention Pursuant to 8 U.S.C. § 1226(a)**

Petitioner concedes he is present in the United States unlawfully. ECF No. 1 ¶ 2. Petitioner does not allege that his inadmissibility is due to any unlawful action by Respondents; rather, Petitioner's inadmissibility, and thus detention pending removal proceedings, are due to his own

pre-existing absence of immigration status. Petitioner has therefore admitted facts that establish he is being lawfully detained pending removal proceedings pursuant to 8 U.S.C. § 1226(a). *See* ECF No. 15 at 7-8. *Cf. Kiadii v. Decker*, 423 F. Supp. 3d 18, 20 (S.D.N.Y. 2018) (petitioner's claim that she was a United States citizen erroneously detained by ICE was substantial).

Petitioner contends that that his detention is unlawful because there was not a warrant issued for his arrest.. ECF No. 16 at 17-18. This is incorrect. On June 14, 2025, BPA William Haffly served Petitioner with a Warrant for Alien Arrest and Notice to Appear. Ex. A, Warrant for Arrest of Alien; Ex. B, Notice to Appear. Petitioner also argues that his detention is unlawful because his removal proceedings were dismissed. ECF No. 16 at 16-17. While the Immigration Judge assigned to Petitioner's immigration case originally dismissed the NTA without prejudice on the ground that Petitioner was not within the court's administrative control, the Immigration Judge has since rescinded the dismissal order and *sua sponte* reopened the case, and Petitioner has an internet-based Master Hearing before the Chelmsford Immigration Court on July 8, 2025. *See* Ex. I, Respondent's Motion to Vacate Hearing or Terminate, *In re Jose Ignacio De La Cruz De La Rosa*, at 1-2. With respect to his removal proceedings, Petitioner also now seeks to vacate the scheduled hearing and argues against reinitiation of proceedings, suggesting that due to the dismissal, there is no valid NTA, despite the rescission of the dismissal. *See* ECF No. 16 at 17; Ex. I. This argument lacks merit because the original dismissal – including the dismissal of the NTA – is not final until expiration of the time to appeal or a waiver of appeal, which the government did not do. *See* 8 C.F.R. §§ 1003.39, 1003.6; *see also* Ex. I at Tab B (indicating the Department of Homeland Security elected to reserve appeal rights). More fundamentally, this dispute is not properly before this Court, as 8 U.S.C. § 1252(g) explicitly bars habeas review of any claim “arising from the decision . . . to commence [removal] proceedings.” Further, any appeal of the

Immigration Judge's decision must go to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.38. Petitioner plainly has access to process through the immigration court, and to the extent that he seeks to block those proceedings, he cannot simultaneously argue through a habeas petitioner that due process is being denied. Thus, Petitioner has not raised a substantial claim that he is being detained unlawfully.

## **2. Fifth Amendment Claims**

With respect to his Fifth Amendment claims, Petitioner argues that he is not dangerous nor a risk of flight. ECF No. 16 at 26-28. Yet, such arguments do not relate to a Fifth Amendment claim; indeed, Petitioner has not alleged an excessively prolonged detention that would create a substantial Fifth Amendment claim for purposes of securing bond in connection with a pending habeas petition. *Cf. Jack v. Decker*, 2022 WL 4085749, at \*15 (S.D.N.Y. Aug. 19, 2022) (suggesting in dicta that due process claim was substantial when petitioner was detained for more than two years without a bond hearing); *see also* ECF No. 15 at 12-13. At the time of filing, Petitioner's detention has lasted approximately three weeks. Therefore, Petitioner has not alleged a substantial Fifth Amendment claim.

## **3. First Amendment Claim**

Next, in light of his admissions that he is in the United States unlawfully, Petitioner has not stated a substantial First Amendment claim because he fails to plausibly plead that he would not have been detained but-for Respondent's allegedly retaliatory motive. *See* ECF No. 15 at 8-9.

## **4. Fourth Amendment Claims**

Finally, Petitioner has not raised substantial claims under the Fourth Amendment because, as a threshold matter, and as previously demonstrated, habeas is not remedy for an alleged Fourth Amendment violation because a person's identity and body are not suppressible. *See* ECF No. 15 at 9-12. Even if habeas could offer a remedy for a Fourth Amendment violation, however,

Petitioner has not raised a substantial claim under *Mapp* because the investigative stop and its scope were lawful.

In the context of immigration enforcement, Congress has authorized agents to detain individuals without a warrant to conduct immigration inspections. *See* 8 U.S.C. § 1357(a)(1); *Chi Yuan Chen v. Gonzales*, 224 F. App'x 116, 118 (2d Cir. 2007) (“[i]mmigration officials can ‘without warrant . . . interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.’”) (quoting 8 U.S.C. § 1357(a)(1)); *see also United States v. Pochardo*, 1992 WL 249964, at \*7 (S.D.N.Y. Sept. 22, 1992) (“an INS agent need only have a ‘reasonable suspicion’ that a person is illegally in this country in order to be justified in interrogating and temporarily detaining that person.”). Thus, the Supreme Court has recognized that probable cause is not required to question someone about their citizenship. *United States v. Cortez*, 449 U.S. 411, 421-22 (1981).

Petitioner acknowledges that, throughout his encounter with the BPAs, he refused to provide his identity or confirm his immigration status. His refusal to identify himself not only prolonged the investigative stop, but also necessitated that the BPAs move him to the Border Patrol station to ensure officer safety. Upon confirming Petitioner’s identity and unlawful status, Border Patrol officials established probable cause that he was present in the United States unlawfully and issued a Form I-200 Warrant for Arrest and Notice to Appear for being present in the United States without being admitted or paroled. *See* Ex. A, Form I-200; Ex. A, Notice to Appear.

**i. Reasonable Suspicion Existed for the Investigative Stop.**

BPA Parent had reasonable suspicion of illegal activity when he stopped the van in which Petitioner was a passenger. Border Patrol agents conducting roving patrols may temporarily detain a vehicle for investigation if “specific articulable facts, together with rational inferences from those facts, reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the

country.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). When basing a traffic stop on reasonable suspicion, “the amount of suspicion needed to justify the encounter is less than a ‘fair probability’ of wrongdoing, and ‘considerably less than proof of wrongdoing by a preponderance of the evidence.’” *United States v. Padilla*, 548 F.3d 179, 186-87 (2d Cir. 2008) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). “[T]he question is whether, based upon the whole picture, they, as experienced Border Patrol officers, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity.” *United States v. Cortez*, 449 U.S. at 421-22 (1981).

Petitioner erroneously insists on a false dichotomy for the basis of the vehicle stop: either the BPAs were using unlawful tactics or they were racially profiling the occupants of the van. ECF No. 16 at 22. The accurate third option, however, is that there were specific articulable facts that – viewed through the eyes of a trained Border Patrol officer – reasonably supported suspicion that occupants of the van were illegally in the country. Under Second Circuit precedent, the following factors guide the reasonable suspicion analysis in this border stop context: “(1) characteristics of the area where the vehicle is found; (2) its proximity to the border; (3) usual traffic patterns on that road; (4) previous experience with alien traffic in the area; (5) recent information about specific illegal border crossings there; (6) the driver’s behavior, such as attempting to evade officers; (7) characteristics of the vehicle itself; and (8) the appearance of persons in the vehicle, such as mode of dress.” *United States v. Singh*, 415 F.3d 288, 294 (2d Cir. 2005). These factors are not exhaustive, and the analysis must always consider the totality of the circumstances. *Id.* at 294-95.

All eight of the *Singh* factors support that reasonable suspicion existed for BPA Parent to stop the van that Petitioner was driving to determine whether its occupants were present in the United States unlawfully. The location of the stop – including its proximity to the border,

characteristics of the area, previous alien traffic and recent information about specific illegal border crossings including the same type of vehicle – all contribute significantly to the reasonableness of BPA Parent’s suspicion. BPA Parent first observed the large passenger van driving south away from the international border on a road that dead-ended less than a mile away at the border. *See United State v. Cruz-Castelazo*, 686 F. Supp. 3d 372, 378-79 (D. Vt. 2023) (quoting *United States v. Nichols*, 142 F.3d 857, 867 (5th Cir. 1998)) (“Although . . . proximity to the border does not alone constitute reasonable suspicion for a Border Patrol stop that is not at the border or its functional equivalent, this ‘vital element’ contributes significantly to the reasonableness of the Border Patrol agents’ suspicions.”); *see also* Ex. F ¶¶ 16, 17, 20; Ex. C; Ex. H ¶ 3 & Exs. 1-5. BPA Parent was aware not only of previous smuggling activity in the area, but also that the specific location where he first observed the van – Drew Road – had been used in a prior smuggling event also involving a large passenger van. *See United States v. Singh*, 415 F.3d at 295 (“type of vehicle known to be favored by immigrant smugglers because of its large passenger capacity” and vehicle’s location “on a rural road near the U.S.-Canadian border in an area where illegal immigrants frequently attempt to enter the United States” were relevant to reasonable suspicion); *see also* Ex. F ¶ 18; Ex. C at 1-2; Ex. H ¶¶ 4-5 & Exs. 1-5. Furthermore, based on his prior experience with Drew Road, BPA Parent knew the van did not belong to any of the few residents of Drew Road and it did not have any markings indicating it was a professional vehicle. *See United States v. Nichols*, 142 F.3d 857, 871 (5th Cir. 1998) (“[T]he vehicle’s appearance, especially when combined with the known characteristics of the area and the particular road, also contributes to the reasonableness of the agents’ suspicion.”); Ex. F ¶ 20; Ex. C at 2.

Additionally, the occupants’ behavior and clothing, which were inconsistent with local residents, further supported a reasonable suspicion. When the van’s driver and passenger observed

BPA Parent's marked Border Patrol vehicle, they appeared to BPA Parent to be nervous and failed to acknowledge him, which was not typical for local residents. *See United States v. Arvizu*, 534 U.S. 266, 275-76 (2002) ("a driver's slowing down, stiffening of posture, and failure to acknowledge a sighted law enforcement officer might well be . . . quite unusual in . . . a remote portion of rural southeastern Arizona."); *see also* Ex. F ¶¶ 21, 23; Ex. C at 2. Moreover, the driver failed to make a complete stop, which was inconsistent with local traffic patterns. Ex. F ¶ 22; Ex. C at 2. BPA Parent also observed that the driver and passenger were wearing plain clothes, which indicated that they were not workers from local farms. Ex. F ¶ 25; Ex. C at 2.

After BPA Parent began following the van, he thought he observed, through tinted windows, additional passengers in the vehicle.<sup>2</sup> Ex. F ¶ 26; Ex. C at 2. Ex. H ¶ 3 & Exs. 1-5. Moreover, the van travelled to Route 105 towards Interstate 89, which is the fastest egress from the border region and thus the type of route typically used by smugglers. *United States v. Singh*, 415 F.3d at 295 (suspect travelling towards main route away from border to New York City relevant reasonable suspicion assessment); *see also* Ex. F ¶ 28; Ex. C at 3. BPA Parent confirmed the passenger van was registered in Milton, Vermont. Ex. F ¶ 29; Ex. C at 3. BPA Parent had recently been informed that smugglers had begun registering cars in Vermont to blend in with local traffic, though these vehicles were typically registered in larger cities further South of the border, such as Milton. Ex. F ¶ 30; Ex. C at 3.

This Court has previously found reasonable suspicion in similar circumstances. *See United State v. Cruz-Castelazo*, 686 F. Supp.3d at 378-79; *United States v. Funez-Pineda*, 2011 WL

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<sup>2</sup> That additional passengers were not ultimately discovered in the van is not relevant to the reasonable suspicion analysis, which is based on an officer's reasonable belief at the time of the stop. BPA Parent's belief that there were additional passengers was reasonable given the multiple rows of seats within the van had headrests and seatbelts that could appear to be additional passengers through the tinted windows of the van. *See* Ex. H, Ex. 5.

5024364, at \*3-4 (D. Vt. Oct. 20, 2011). In those cases, as here, the totality of the circumstances created reasonable suspicion that occupants of the van were present unlawfully – particularly where BPA Parent was familiar with the local residents and vehicles on Drew Road, where he encountered an unknown passenger van traveling south that was same type used in a prior smuggling event on the same road that dead-ended at the international border less than one mile away, and whose occupants’ reacted nervously to the agent’s presence. Therefore, the stop of the van was supported by reasonable suspicion and did not violate the Fourth Amendment.

**ii. The Investigative Stop Was Reasonable to Permit BPA Parent to Determine Petitioner’s Identity.**

Petitioner contends he was arrested without probable cause or a warrant in violation of his Fourth Amendment rights. ECF No. 1, ¶ 37; ECF No. 16 at 22. The Second Circuit has recognized that Section 1357(a)(1) permits immigration enforcement officials “to interrogate and temporarily detain an alien upon circumstances creating a reasonable suspicion, not arising to the level of probable cause to arrest, that the individual so detained is illegally in this country.” *Ojeda-Vinales v. I.N.S.*, 523 F.2d 286, 287 (2d Cir. 1975) (internal quotations removed).<sup>3</sup> However, reasonable suspicion – not probable cause – is all that is required to detain a person for questioning about their citizenship. *United States v. Cortez*, 449 U.S. at 421-22; see *United States v. Brignoni-Ponce*, 422 U.S. at 880.

The scope of an investigative stop is reasonable so long as it is “reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry v. Ohio*, 392 U.S. 1, 20 (1968). “[Supreme Court] decisions make clear that questions concerning a suspect’s identity

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<sup>3</sup> Additionally, agents may, without a warrant, “within a [100 miles] from any external boundary of the United States, . . . board and search for aliens . . . any railway car, aircraft, conveyance, or vehicle[.]” 8 U.S.C. § 1357(a)(3); 8 C.F.R. 287.1 (defining “reasonable distance” as 100 miles).

are a routine and accepted part of many *Terry* stops.” *Hiibel v. Sixth Jud. Dist. Ct. of Nevada, Humboldt Cnty.*, 542 U.S. 177, 186 (2004). Furthermore, a law that requires a person “to disclose his name in the course of a valid *Terry* stop is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures.” *Id.* at 188 (upholding a state “stop and identify” statute that authorized an officer to detain someone to ascertain the person’s identity, and required that the person to identify himself). Here, the BPAs were authorized under 8 U.S.C. § 1357(a)(1) to, upon reasonable suspicion (which existed) to conduct an inspection to confirm Petitioner’s immigration status. *See Ojeda-Vinales v. I.N.S.*, 523 F.2d at 287. Therefore, the BPAs’ requests for information regarding Petitioner’s identity and immigration status were reasonable.

Correspondingly, Petitioner did not have a right to refuse to answer questions regarding his immigration status. Congress has determined that noncitizens must always carry their alien registration documentation, *see* 8 U.S.C. § 1304(e), for the “obvious purpose” of ensuring documentation of lawful status “will be available for inspection by immigration enforcement officials under appropriate circumstances,” *Rajah v. Mukasey*, 544 F.3d 427, 440 (2d Cir. 2008). In *Rajah v. Mukasey*, the Second Circuit explained that noncitizens do not have the “right to remain silent” with respect to documentation of their lawful status, and in turn, “the government does not violate the Fourth Amendment by obtaining documents or statements in the course of an alien’s compliance with a statutorily authorized registration program.”<sup>4</sup> *Id.* at 440-41. This is because:

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<sup>4</sup> Furthermore, contrary to Petitioner’s contention that he had a right to remain silent, ECF No. 16 at 11, the Second Circuit held “the Fifth Amendment does not protect an alien from having to provide information relevant to the registration that is a condition of their presence in the country. This information includes passports, I-94s, or other documents or oral statements regarding their immigration status.” *Rajah v. Mukasey*, 544 F.3d at 441; *see also United States v. Balsys*, 524 U.S. 666, 671 (1998) (“the risk that his testimony might subject him to deportation is not a sufficient ground for asserting the [Fifth Amendment] privilege [against compelled testimony], given the civil character of a deportation proceeding.”).

An alien's presence in the country is conditioned upon compliance with such requirements. Immigration laws, difficult to enforce by their very nature, would become completely unenforceable if an alien, once in the country, could then refuse all compliance with requests for information relevant to immigration status from immigration authorities.

*Id.* at 441. Thus, the reasonableness of the scope of the investigative stop must be assessed in light of Petitioner's refusal to comply with the BPAs' lawful requests regarding his immigration status.

**iii. The Scope of the Stop Was Reasonable Given Petitioner's Refusal to Respond to the Immigration Inspection.**

Given Petitioner's refusal to respond to the BPAs' inquiries, the BPAs acted reasonably to determine Petitioner's identity and immigration status in a safe manner. In assessing the reasonableness of an investigative stop, "[t]he scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case[.]" but an investigative detention should "last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983); *see also United States v. Sharpe*, 470 U.S. 675, 686 (1985) (to analyze whether the scope of an investigative stop is reasonable, courts must "examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant."). "Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Florida v. Royer*, 460 U.S. at 501.

"The pertinent question in undertaking [a reasonableness] assessment, however, 'is not simply whether some other alternative was available' to authorities as a means for conducting the stop." *United States v. Patterson*, 25 F.4th 123, 141 (2d Cir. 2022) (quoting *United States v. Sharpe*, 470 U.S. at 687). "Rather, a court must consider whether police acted unreasonably in failing to recognize a less intrusive alternative or to pursue it." *Id.* at 141 (quoting *Sharpe*, 470 U.S. at 687) (cleaned up). Furthermore, "[a] court making this assessment should take care to

consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing.” *United States v. Sharpe*, 470 U.S. at 686.

Any delay and force used during the investigative stop was caused by Petitioner’s refusal to answer legally justified questions regarding his identity and immigration status. In assessing whether the scope of an investigative stop was reasonable, the Supreme Court has “refused to charge police with delays in investigatory detention attributable to the suspect’s evasive actions[.]” *United States v. Montoya de Hernandez*, 473 U.S. 531, 543 (1985); *see also United States v. Masterson*, 2009 WL 2365334, at \*5 (D. Vt. July 29, 2009) (“The fact that a suspect’s actions prolonged a detention should be considered when analyzing whether the police officer acted diligently.”); *United States v. Craig*, 2009 WL 281138, at \*9 (D. Vt. Feb. 4, 2009) (scope of an investigative stop was reasonable because “[t]he length of Craig’s detention was directly related to the delay caused by Craig’s untruthful responses and the time it took the officers to verify his identity.”). Here, Petitioner’s evasive actions in refusing to respond to the BPAs’ lawful questions were directly related to any delay and intrusion the BPAs needed to take to identify him. Therefore, any delays in Petitioner’s detention cannot be “charged” against the reasonableness of the scope of the investigative stop.

That the circumstances necessitated the BPAs to bring Petitioner to the station for identification does not undermine the reasonableness of the stop. Transporting an individual to a police station for identification may be the least intrusive or dilatory means to dispel an officer’s reasonable suspicion. *See United States v. Lefebvre*, 117 F.4th 471, 474-76 (2d. Cir. 2024). In *United States v. Lefebvre*, the Second Circuit held that a suspect’s seizure and subsequent transportation while in handcuffs to the police station for identification purposes was properly viewed as an investigative stop. *Id.* While the Court recognized that “many of the steps the officers

took involved shows of force often associated with arrest,” it nevertheless concluded that none of the steps “exceeded the degree of intrusion necessary to confirm or dispel the officers’ reasonable suspicion,” under circumstances when bringing the suspect to the station was “arguably the least dilatory means” to do so. *Id.* (quotations omitted). In the face of Petitioner’s refusal to identify himself or provide information on his immigration status, bringing him to the station was the least dilatory means to confirm or dispel the BPAs’ reasonable suspicion that he was present unlawfully. Indeed, Petitioner does not contend there was an alternative method of identification available that the BPAs could have used to identify him or to confirm his immigration status. Therefore, it was reasonable for the officers to bring Petitioner to the station during their investigative stop to identify him and confirm his immigration status.

Finally, the degree of force used during the scope of the stop was reasonable because the BPAs had a reasonable basis to believe that Petitioner posed a physical threat. “[W]here an officer has a reasonable basis to think that the person stopped poses a present physical threat to the officer or others, the Fourth Amendment permits the officer to take ‘necessary measures . . . to neutralize the threat’ without converting a reasonable stop into a *de facto* arrest.” *United States v. Newton*, 369 F.3d 659, 674 (2d Cir. 2004) (quoting *Terry v. Ohio*, 392 U.S. at 24). In particular, “investigative detentions involving suspects in vehicles are especially fraught with danger to police officers.” *United States v. Senna*, 2022 WL 575384, at \*6 (D. Vt. Feb. 25, 2022) (quoting *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)). Concerns regarding officer safety during immigration checks are not hypothetical under these circumstances when, just a few months ago, a BPA was killed in Northern Vermont while attempting to conduct an immigration inspection during a midday a traffic stop. Furthermore, the BPAs were rightfully concerned that the Petitioner and the passenger were making calls to get additional people to further interfere with the investigative

stop. *See* Ex. D at 2. The prospect that Petitioner and the passenger were calling for additional people to come assist them was also not hypothetical, as a larger crowd subsequently gathered at the Richford Station seeking to secure Petitioner's release. Ex. E at 2-3. And the mere fact that the BPAs broke the driver's side window to secure the van's occupants did not render the investigative stop unreasonable. *See, e.g., Madsen v. Washington Township Police*, 2021 WL 3932056, at \*6 n.5 (D.N.J.) (breaking the window was not a use of excessive force when individual "repeatedly refused [officers'] commands to roll down his window, unlock the car door, or open the car door, and [individual] was warned that the officers would break the window to arrest him if he failed to comply"). While "many of the steps the officers took involved shows of force often associated with arrest," *United States v. Lefebvre*, 117 F.4th at 474-76, any delay or intrusion beyond the preliminary stop was due to Petitioner's own refusal to identify himself and cannot be "charged" against the reasonableness of the scope of the investigative stop, *see Montoya de Hernandez*, 473 U.S. at 543. Therefore, the scope and methods of the investigative stop were reasonable.

**iv. Petitioner's Identity Established Probable Cause and Border Patrol Officers Issued a Warrant for His Arrest.**

Petitioner's arrest was lawful. After the BPAs confirmed Petitioner's identity and immigration status at the station, thereby establishing probable cause that he was present in the United States unlawfully, he was arrested pursuant to a warrant and NTA. Ex. A; Ex. B. Petitioner contends that Border Patrol's own statements corroborate that the stop, subsequent detention, and use of force lacked reasonableness by acknowledging that Petitioner's citizenship and lack of lawful immigration status were not confirmed until they were at the station. ECF No. 14 at 17. To the contrary, this statement confirms that Petitioner had refused to provide this information, and thus, the Border Patrol officers were still attempting to conduct a lawful immigration inspection

once at the station as an ongoing investigative stop. Therefore, Petitioner's arrest was lawful because it was made pursuant to a Warrant and NTA supported by probable cause.

While release under habeas is not a proper remedy for potential violations of the Fourth Amendment in the context of civil deportation proceedings, there were no such violations here. The stop was supported by reasonable suspicion, the scope of the investigative stop was reasonable given Petitioner's refusal to identify himself, and his arrest was supported by probable cause and made pursuant to a warrant. Therefore, Petitioner has not raised a substantial Fourth Amendment claim.

### **CONCLUSION**

Because the Court lacks authority to grant bail under *Mapp*, and because Petitioner has not met his difficult burden under *Mapp* to establish substantial claims and extraordinary circumstances, the Court should deny his request for bail.

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Respectfully submitted,

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