

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

**K-S-**

**Petitioner,**

**v.**

**E.L. TATUM, JR.**, Warden of the Federal Correctional Institute, Berlin; **PATRICIA H. HYDE**, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General;

**Respondents.**

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

**INTRODUCTION**

Petitioner K-S-<sup>1</sup> is an asylum seeker from Morocco. *See* 8 U.S.C. § 1225(a)(2) (“[a]n arriving alien who is a stowaway . . . may apply for asylum only if the stowaway is found to have a credible fear of persecution”). Petitioner fears going back to Morocco because he was and will be persecuted on account of his sexual orientation. Petitioner already prevailed in asylum before the Immigration Judge (IJ) on May 23, 2025. However, Respondents have appealed the IJ’s decision to the Board of Immigration Appeals (BIA) on June 18, 2025. Since July 27, 2024,

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<sup>1</sup> Petitioner is filing a separate motion to proceed pseudonymously.

Petitioner has been detained under Respondents' custody pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii).

Throughout this time, Petitioner has never received the basic due process of a bond hearing before a neutral decision-maker at which he could contest his imprisonment. Petitioner submitted a parole request to Respondents after prevailing in asylum before the IJ on or about July 8, 2025. However, Respondents have not responded to the parole request.

It is well-settled that Petitioner has due process rights, even as a stowaway. *See Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996) (stowaways entitled to due process with respect to their asylum claims). Petitioner's prolonged detention violates the Due Process Clause of the Fifth Amendment because he has been and will be subject to such detention for an unreasonable period of time. Therefore, this Court should order a bond hearing before an IJ, at which DHS bears the burden of justifying Petitioner's detention by clear and convincing evidence. *See A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (granting a bond hearing for an arriving alien at which DHS bears the burden of justifying his detention under clear and convincing evidence because his ten months detention was unconstitutionally unreasonable under the Due Process Clause, and his detention would continue); *Alberto v. Decker*, Case No. 1:17-cv-2604 (PKC), 2017 U.S. Dist. LEXIS 202630, at \*18-19 (S.D.N.Y. Nov. 21, 2017) (same for 7 months of detention); *Lett v. Decker*, 346 F. Supp. 3d 379, 385-87 (S.D.N.Y. 2018) (same for 10 months of detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 601-605 (E.D. Va. 2021) (same for 24 months of detention); *De Ming Wang v. Brophy*, No. 17-CV-6263-FPG, 2019 U.S. Dist. LEXIS 1826, at \*6-7 (W.D.N.Y. Jan. 3, 2019) (same for 24 months of detention); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 443 (D.N.J. 2019) (same for 20 months of detention and

collecting cases); *Didier Kofe Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850 (E.D. Va. 2020) (same for 22 months of detention).

Petitioner further alleges as follows:

### **PARTIES**

1. Petitioner K-S- is a noncitizen from Morocco who is currently detained by Respondents at Federal Correctional Institution (FCI) Berlin in Berlin, New Hampshire. Ex. 7 (ICE Online Detainee Locator).

2. Respondent E.L. Tatum, Jr. is the warden of FCI Berlin, and he is being sued in his official capacity as the warden. He is Petitioner's immediate custodian.

3. Respondent Patricia Hyde is the Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and she is being sued in her official capacity. She is Petitioner's legal custodian.

4. Respondent Todd Lyons is the Acting Director, U.S. Immigration and Customs Enforcement, and he is being sued in his official capacity. He is Petitioner's legal custodian.

5. Respondent Kristi Noem is the Secretary of U.S. Department of Homeland Security, and she is being sued in her official capacity. She is Petitioner's legal custodian.

6. Respondent Pamel J. Bondi is the United States Attorney General, and she is being sued in her official capacity. She is also Petitioner's legal custodian.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

8. Venue is proper in the District of New Hampshire because Petitioner is currently detained at FCI Berlin in Berlin, New Hampshire, which is in the territorial jurisdiction of this Court. 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

### **FACTS**

9. Petitioner is a 25-year-old asylum seeker from Morocco. Ex. 1 (Petitioner's Affidavit) at ¶1. He is afraid of being persecuted in Morocco because of his sexual orientation. Ex. 1 at ¶1.

10. In fact, Petitioner already suffered substantial physical harm in Morocco because of his sexual orientation. Ex. 1 at ¶16.

11. Petitioner was a soccer player and was accepted into a football academy in Turkey. Ex. 1 at ¶19. However, in light of the COVID-19 pandemic, all international players, including Petitioner, had to leave Turkey. *Id.* at ¶21.

12. Because Petitioner feared going back to Morocco, Petitioner boarded a truck to Greece. Ex. 1 at ¶22. After that, Petitioner traveled through several countries and finally arrived in Germany. *Id.* at ¶23.

13. Once in Germany, Petitioner applied for asylum. Ex. 1 at ¶23. However, the German authority denied his asylum application. *Id.*

14. Because Petitioner could not return to Morocco, Petitioner traveled to other countries in Europe. Ex. 1 at ¶23. However, Petitioner was detained and questioned everywhere and deported back to Germany because he did not have any identification with him, and his fingerprints flagged his previous presence in Germany. *Id.* at ¶24.

15. Petitioner was imprisoned in Germany five times because of the lack of identification and previous asylum denial. Ex. 1 at ¶25. Petitioner felt desperate to get out of this endless cycle of fear and detention in Europe. *Id.* at ¶26.

16. In July 2024, attempting to make it to Canada to claim asylum, Petitioner hid in the trunk of a car that was in a parking lot full of cars headed to the United States and Canada. The car Petitioner was hiding in was loaded onto a vehicle carrier ship. Ex. 1 at ¶27. *Id.* Petitioner stayed in the trunk of the vehicle for several days. But when Petitioner came out of the trunk, he was detained by the ship's crew as a stowaway.

17. The ship arrived in Rhode Island on July 27, 2024. Petitioner was handed over to the United States immigration authorities. Ex. 1 at ¶28; Ex. 2 (Enforce Alien Removal Module (EARM) Summary).

18. After the initial border encounter interview, Petitioner passed the credible fear interview. Ex. 3 (Notice of Referral to Immigration Judge; Record of Sworn Statement).

19. On May 27, 2025, the IJ granted Petitioner asylum. Ex. 4 (IJ Order).<sup>2</sup>

20. On June 24, 2025, Respondents timely filed a notice of appeal to the BIA. Ex. 5 (Receipt Notice of Appeal).

21. On or about July 8, 2025, Petitioner submitted a parole release request to Respondents. Ex. 6 (Parole Request Package). However, Respondents have not responded to this request.

22. The BIA has not issued a briefing schedule, and Petitioner remains in detention at FCI Berlin.

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<sup>2</sup> The IJ hearing transcripts and detailed IJ decision are currently being prepared by the BIA. "The immigration court does not prepare a transcript of proceedings." Chapter 5.6, Immigration Court Practice Manual, <https://www.justice.gov/eoir/reference-materials/ic/chapter-5/6>. Petitioner will supplement the record once these documents become available.

## **LEGAL BACKGROUND**

### **8 U.S.C. § 1225(b) – Mandatory Detention**

23. 8 U.S.C. § 1225(b) provides procedures for the inspection of applicants for admission, including the expedited removal of individuals who present at ports of entry and are deemed inadmissible on specified grounds.

24. Petitioner is imprisoned pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). Section 1225(b)(1)(B)(ii) provides that these individuals “shall be detained for further consideration” of their application for asylum, which occurs at a removal hearing inside the United States.

25. Arriving aliens are ineligible for bond hearings before an IJ. *See* 8 C.F.R. § 1003.19(h)(2)(i) (“[A]n immigration judge may not redetermine conditions of custody . . . [for] arriving aliens in removal proceedings.”).

26. The statute provides that individuals in Petitioner’s situation—those who presented themselves at ports of entry—can be considered for release only through the “parole” process. 8 U.S.C. § 1182(d)(5)(A); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018). ICE officers (i.e. the jailing authorities) informally conduct such reviews. Officers make parole decisions—decisions that result in months or years of additional incarceration—by checking boxes on a form that contains no explanation of the factual basis for the decision.

### **Due Process Limits on Mandatory Prolonged Detention**

27. The Due Process Clause forbids prolonged arbitrary imprisonment. “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. 678, 690 (2001). Under due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*,

406 U.S. 715, 738 (1972)); *see also Ly v. Hanson*, 351 F. 3d 263, 269 (6th Cir. 2003) (“[T]he time of [immigration] incarceration is limited by constitutional considerations, and must bear a reasonable relation to removal”).

28. These basic due process protections apply to all noncitizens, including both removal and inadmissible noncitizens. *See Rosales-Garcia v. Holland*, 322 F. 3d 386, 409 (6th Cir. 2003) (en banc) (holding that “excludable aliens . . . are clearly protected by the Due Process Clause of the Fifth and Fourteenth Amendments.”); *see also Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting) (noting that “both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious”); *Chi Thon Ngo v. I.N.S.*, 192 F. 3d 390, 396 (3d Cir. 1999), amended (Dec. 30, 1999) (“Even an excludable alien is a ‘person’ for purposes of the Fifth Amendment and is thus entitled to substantive due process.”).

29. Under these principles, at a minimum, due process requires “adequate procedural protections” to ensure that the Government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

30. Prolonged civil detention is impermissible without an individualized hearing before a neutral decision-maker that tests the Government’s justification for incarceration. *See United States v. Salerno*, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness); *Ly*, 351 F. 3d at 273 (holding, on constitutional avoidance

grounds, that “the reasonableness of the length of detention is subject to review by federal courts in habeas proceedings” and affirming grant of habeas to non-citizen detained 18 months).

31. In *Jennings*, 138 S. Ct. at 845, the Supreme Court held that Section 1225(b) authorizes detention until the conclusion of removal proceedings without a bond hearing. However, the Supreme Court did not address the constitutionality of prolonged detention without a bond hearing. *Id.* at 851 (“[W]e do not reach [the constitutional] arguments.”).

32. Outside the national security context, the Supreme Court has not authorized prolonged civil confinement without the bedrock protection of an individualized hearing addressing the need for incarceration under the Due Process Clause. See *Toyosaburo Korematsu v. United States*, 323 U.S. 214 (1944); *Ludecke v. Watkins*, 335 U.S. 160 (1948); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953); see also *Castro v. U.S. Dep’t of Homeland Security*, 835 F.3d 422, 449 n.32 (3d Cir. 2016) (“We doubt . . . that Congress could authorize, or that the Executive could engage in, the indefinite, hearingless detention of an alien simply because the alien was apprehended shortly after clandestine entrance.”).

33. Several district courts have analyzed prolonged detention for arriving aliens on due process grounds. See *A.L. v. Oddo*, 761 F. Supp. 3d 822, 826 (W.D. Pa. 2025) (granting a bond hearing for an arriving alien at which DHS bears the burden of justifying his detention under clear and convincing evidence because his ten months detention was unconstitutionally unreasonable under the Due Process Clause, and his detention would continue); *Alberto v. Decker*, Case No. 1:17-cv-2604 (PKC), 2017 U.S. Dist. LEXIS 202630, at \*18-19 (S.D.N.Y. Nov. 21, 2017) (same for 7 months of detention); *Lett v. Decker*, 346 F. Supp. 3d 379, 385-87 (S.D.N.Y. 2018) (same for 10 months of detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 601-605 (E.D. Va. 2021) (same for 24 months of detention); *De Ming Wang v. Brophy*, No. 17-CV-6263-

FPG, 2019 U.S. Dist. LEXIS 1826, at \*6-7 (W.D.N.Y. Jan. 3, 2019) (same for 24 months of detention); *Tuser E. v. Rodriguez*, 370 F. Supp. 3d 435, 443 (D.N.J. 2019) (same for 20 months of detention and collecting cases); *Didier Kofe Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850 (E.D. Va. 2020) (same for 22 months of detention). Therefore, arriving aliens have due process rights to a bond hearing when detention has become unreasonably prolonged.

### **CLAIMS FOR RELIEF**

#### **COUNT 1** **DUE PROCESS — RIGHT TO BOND HEARING**

34. The foregoing allegations are realleged and incorporated herein.

35. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend V.

36. To justify Petitioner’s ongoing prolonged detention, due process requires that Respondents establish, at an individualized hearing before a neutral decision-maker, that Petitioner’s detention is justified by clear and convincing evidence of flight risk or danger.

37. *First*, Petitioner’s detention has been and will be unreasonably prolonged, as it is currently approaching 13 months.

38. *Second*, Petitioner’s proceedings are unlikely to be completed in the near future. As explained above, it is unclear how long DHS’s BIA appeal would take. Even if the BIA sustains DHS’s appeal, the case will likely be that the case will be remanded to the IJ for the consideration of statutory withholding of removal and the CAT protection.

39. *Third*, Petitioner has not engaged in any dilatory tactic other than exercising the rights afforded to him by statute. Moreover, DHS was the one who appealed the IJ’s decision to the BIA.

40. *Fourth*, Petitioner has been at a medium security federal prison. *See Rocha v. Barr*, 422 F. Supp. 3d 472, 481 (D.N.H. 2019) (considering “whether the immigration detention facility is meaningfully different from a penal institution for criminal detention”).

41. For these reasons, Petitioner’s ongoing prolonged detention without a bond hearing violates due process, and the Court should order a prompt bond hearing where DHS bears the burden of showing by clear and convincing evidence that his detention is necessary.

**PRAYER FOR RELIEF**

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Order a constitutionally adequate, individualized bond hearing at which the government will bear the burden of establishing, by clear and convincing evidence, that Petitioner’s continued detention is justified;
- (3). Award attorney’s fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. §504, if applicable; and
- (4). Order any further relief this Court deems just and proper.

Respectfully submitted this 3rd day of August 2025.

K-S-,

By and through his Counsel,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

Chelsea Eddy (NH Bar: 276248)

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