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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11
12 PEDRO JOAQUIN AVILES-MENA,

13 Petitioner,

14 v.

15 POLLY KAISER, *et al.*,

16 Respondents.

) Case No. 3:25-cv-06783

)
)
) **SUPPLEMENTAL BRIEF IN SUPPORT OF**
) **RESPONDENTS' OPPOSITION**
) **TO PETITIONER'S MOTION FOR**
) **PRELIMINARY INJUNCTION**
)

1 I. INTRODUCTION

2 Respondents provide this supplemental brief to address Petitioner's request for his asylum
3 application to be reinstated, in response to the Court's Order issued on August 21, 2025 following the
4 hearing on Petitioner's motion for preliminary injunction. ECF No. 14. This Court should decline to
5 issue an order related to Plaintiff's dismissed asylum application for two reasons.

6 First, if the Court grants Petitioner's preliminary injunction, maintenance of the status quo would
7 not include the reinstatement of his asylum application because that was properly dismissed prior to
8 Petitioner's detention. Because Petitioner was placed in expedited removal proceedings, United States
9 Citizenship and Immigration Services ("USCIS") did not have jurisdiction over affirmative asylum
10 application after his humanitarian parole expired. Therefore, whether or not his *detention* is proper under
11 28 U.S.C. § 1225(b)—the subject of this habeas petition—is unrelated to whether his asylum application
12 was properly dismissed.

13 Second, this Court lacks jurisdiction to consider a challenge to the dismissal of an asylum
14 application because it is not relief that falls within the scope of the habeas writ.

15 II. ARGUMENT

16 A. Maintaining the Status Quo Would Not Implicate Petitioner's Asylum Application Because It Was Properly Dismissed by USCIS for Lack of Jurisdiction

17 Petitioner is subject to expedited removal proceedings and, therefore, cannot file a valid
18 affirmative asylum application with USCIS. For an alien originally placed in expedited proceedings, the
19 removal process varies depending upon whether the alien indicates either "an intention to apply for
20 asylum" or "a fear of persecution or torture." 8 C.F.R. §§ 235.3(b)(4), 1235.3(b)(4)(1); *see* 8 U.S.C.
21 § 1225(b)(1)(A)(ii). If the alien does not so indicate, the inspecting officer "shall order the alien
22 removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i).
23 However, if the alien does indicate an intention to apply for asylum or fear of persecution or torture,
24 the officer "shall refer the alien for an interview by an asylum officer." 8 U.S.C. § 1225(b)(1)(A)(ii).
25 That officer assesses whether the alien has a "credible fear of persecution or torture," 8 C.F.R.
26 § 208.30(d)—in other words, whether there is a "significant possibility" that he or she is eligible for
27 "asylum under section 208 of the Act," "withholding of removal under section 241(b)(3) of the Act," or
28

1 withholding or deferral of removal under the Convention Against Torture (“CAT”), 8 C.F.R.
2 § 208.30(e)(2)–(3).

3 If the alien does not establish a credible fear, the asylum officer “shall order the alien removed
4 from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii)(I). But if the
5 alien does establish such a fear, he is entitled to “further consideration of the application for asylum.” 8
6 U.S.C. § 1225(b)(1)(B)(ii). By regulation, that “further consideration” takes the form of full removal
7 proceedings under 8 U.S.C. § 1229a, in which the asylum application is considered by the immigration
8 judge. 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). Thus, if an alien originally placed in expedited
9 removal establishes a credible fear, he receives a full hearing before an immigration judge.

10 Affirmative asylum applications may be made by an alien who is *not* in expedited removal
11 proceedings. Generally, under 8 U.S.C. § 1158(a)(1), “[a]ny alien who is physically present in the
12 United States or who arrives in the United States . . . may apply for asylum in accordance with this
13 section or, where applicable, section 1225(b) of this title.” Some aliens seeking asylum under 8 U.S.C. §
14 1158 are eligible to do so by filing a Form I-589, Application for Asylum and for Withholding of
15 Removal, directly with the USCIS Asylum Office. *See I-589 Application for Asylum and for*
16 *Withholding of Removal Information Page*, <https://www.uscis.gov/i-589> (last accessed June 25, 2025).
17 However, with limited exceptions inapplicable here, *see* 8 U.S.C. § 1225(b)(1)(F) and (G), an alien in
18 expedited removal cannot file a Form I-589 application with the Asylum Office and, instead, must
19 complete the credible fear interview process. *See* 8 U.S.C. §§ 1225(b)(1)(A)(ii), (b)(1)(B). Specifically,
20 an alien in expedited removal who indicates an intent to file for asylum or has a fear of persecution is
21 referred for a credible fear interview with an asylum officer. *See id.* After the credible fear interview, if
22 and only if the asylum officer determines that the alien has established a “significant possibility” they
23 could establish eligibility for asylum under 8 U.S.C. § 1158, that individual is then permitted to file a
24 Form I-589 application. 8 U.S.C. § 1225(b)(5). Generally, at that point, the alien would be issued a Form
25 I-862, Notice to Appear, and would file their Form I-589 application in removal proceedings before an
26 immigration judge. *See Obtaining Asylum in the United States: Defensive Asylum Processing with*
27 *EOIR*, [https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-](https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states)
28 [united-states](https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states) (last accessed June 25, 2025).

1 In this case, Petitioner was placed in expedited removal proceedings on May 17, 2022, the day
 2 after he entered the United States. ECF No. 11 at 5. On May 30, 2022, Petitioner claimed fear of
 3 returning to his country of origin and his case was referred to asylum officers to conduct a Credible Fear
 4 Interview. *Id.* Petitioner was then released on conditional parole pursuant to 8 U.S.C. 1182(d)(5)(A). *Id.*
 5 Petitioner filed an affirmative I-589 Application for Asylum and Withholding on May 22, 2023. *Id.* On
 6 May 31, 2023, Petitioner's parole expired pursuant to his conditional parole notice. *Id.* Under
 7 § 1182(d)(5)(A), once an alien's parole expires, he "shall forthwith return or be returned to the custody
 8 from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as
 9 that of any other applicant for admission to the United States." In this instance, that was a return to his
 10 status in expedited removal proceedings. Under 8 U.S.C. § 1225(b)(1)(B), the sole avenue for Plaintiff
 11 to pursue his asylum claim while in expedited removal is the credible fear process. Because USCIS
 12 therefore lacked jurisdiction to adjudicate Plaintiff's Form I-589 application, the agency properly
 13 dismissed Plaintiff's Form I-589 application on June 5, 2025. *See* ECF No. 11 at 5. Instead, to present
 14 his claim for asylum, Plaintiff has been referred for a credible fear interview with an asylum officer. *See*
 15 8 U.S.C. §§ 1225(b)(1)(A)(ii), (b)(1)(B).

16 The detention that preceded this action occurred on August 8, 2025. ECF No. 11 at 5, two
 17 months after Petitioner's asylum application was dismissed. Therefore, if the Court is inclined to grant a
 18 preliminary injunction and maintain the status quo, that would include Petitioner's status as one whose
 19 asylum application had been lawfully dismissed due to lack of jurisdiction.

20 **B. The Court Lacks Jurisdiction to Hear Petitioner's Challenge to the Asylum**
 21 **Application Dismissal**

22 The Court also lacks jurisdiction to consider Petitioner's challenge to the dismissal of his asylum
 23 application because such relief is not available through habeas. The Supreme Court has established that
 24 the writ of habeas "simply provide[s] a means of contesting the lawfulness of restraint and securing
 25 release." *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 117 (2020); *see also*
 26 *Preiser v Rodriguez*, 411 U.S. 475, 484 (1973) ("It is clear ... from the common-law history of the writ
 27 ... that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody,
 28 and that the traditional function of the writ is to secure release from illegal custody.")

As such, requests such the one Petitioner now makes – relief from his asylum application dismissal – is relief that “falls outside the scope of the common-law habeas writ.” *See Thuraissigiam*, 591 U.S. at 118; *Guerrier v. Garland*, 18 F.4th 304, 312 (9th Cir. 2021) (*Thurasissigiam* precludes court from reviewing petition requesting review of how agency determines whether an alien subject to expedited removal is eligible for asylum); *Sandoval-Linares v. Albencer*, No 220cv00928, 2020 WL 7343128, at *8 (C.D. Cal. Dec. 10, 2020) (same). Because Petitioner seeks a writ of habeas corpus, the relief he seeks with regard to his asylum application falls outside the scope of what is before this Court. Therefore, the Court lacks jurisdiction to hear this claim¹.

III. CONCLUSION

For the aforementioned reasons as well as those discussed in Respondents’ Opposition (ECF No. 11), the government respectfully requests that the Court deny Petitioner’s motion for preliminary injunction.

Dated: August 28, 2025

Respectfully submitted,

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¹ Respondents also notes that the Court lacks jurisdiction to consider Petitioner’s challenge to his asylum application dismissal because the dismissal is not a final agency action. *See Dhariwal v. Mayorkas*, No. 11-cv-2593-PSG, 2011 WL 6779314, at *4 (N.D. Cal. Dec. 27, 2011) (district court lacked jurisdiction because termination of asylum application was not a final agency action where the pendency of removal proceedings meant that further administrative relief was available); *Singh v. Bardini*, No. 11-cv-1694-SBA, 2011 WL 662332, at *3 (N.D. Cal. Feb. 27, 2012) (“USCIS’s termination of Plaintiff’s asylum status . . . cannot be construed as final agency action” and, therefore, court lacks jurisdiction); *Castro-Castro v. Bardini*, No. 10-cv-5453-MMC, 2011 WL 2295176, at *2 and 4 (N.D. Cal. Jun. 9, 2011) (finding no jurisdiction where plaintiffs’ asylum applications had been denied but they were still in removal proceedings).