UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MOHAMMED JIHAD BAHRM RASHID, *Petitioner*, v. GREG HALE, Superintendent, Northwest State Correctional Facility – Saint Albans; 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; 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; PAMELA BONDI, in her official capacity as U.S. Attorney General; *Respondents*.	)	Case No. 2:25-cv-732

FEDERAL RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO TEMPORARY RESTRAINING ORDER

Federal Respondents 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; 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 Protection; 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 respectfully submit this memorandum of law in opposition to Petitioner Mohammed Jihad Bahrm Rashid's Petition for Writ of Habeas Corpus, ECF No. 1, and in response to the Court's Order granting a Temporary Restraining Order, ECF No. 3.

PRELIMINARY STATEMENT

The crux of this petition is Mr. Rashid's contention that the Government has "fail[ed] to articulate a clear and lawful basis for [his] continued detention." Pet. ¶ 4. Mr. Rashid is detained under 8 U.S.C. § 1225(b)(1)(B), which requires detention of any asylum applicant until the asylum process is complete. Regulations governing the process for stowaways claiming asylum likewise authorize detention "during any consideration of the asylum application." *See* 8 C.F.R. § 241.11(d)(1). Although an Immigration Judge granted Mr. Rashid's application for asylum, Pet. ¶ 1; Declaration of Keith M. Chan (Ex. A) ¶ 11, the asylum process that Congress created has not yet concluded. Immigration and Customs Enforcement exercised its right to appeal that decision to the Board of Immigration Appeals. Chan Decl. ¶ 12; 8 U.S.C. § 1158(d)(5)(A)(iv) (authorizing administrative appeals "of a decision granting or denying asylum"). Briefing is complete and the appeal remains pending. Chan Decl. ¶ 16.

In short, the statutory scheme that Congress devised mandates that Petitioner remain detained until the asylum process is complete. Because the process is ongoing, his detention is lawful.

The petition should accordingly be denied, and the temporary restraining order should be dissolved.

FACTUAL BACKGROUND

Petitioner is not a United States citizen and arrived in the United States as a stowaway on July 27, 2024. *See* Pet. ¶ 2; Declaration of Keith M. Chan (Ex. A) ¶ 6. Petitioner snuck into the trunk of a car, which was boarded onto the MV Lake Wanaka ship at a port in Emden, Germany. Chan Decl. ¶ 6. When the ship arrived in Rhode Island, ICE detained Petitioner under 8 U.S.C. § 1225; *see also* 8 C.F.R. § 241.11(a) ("a vessel or aircraft . . . bringing any alien stowaway to the United States is required to detain the stowaway on board the vessel or aircraft . . . until completion of the inspection of the alien by an immigration officer."). On August 8, 2024, ICE issued Petitioner a Form I-863, Notice of Referral to Immigration Judge alleging that he arrived in the United States as a stowaway. Chan Decl. ¶ 7. He was detained at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island. Chan Decl. ¶ 6.

On September 16, 2024, counsel for Petitioner entered his appearance before the immigration court, and on October 9, 2024, Petitioner made an asylum application by filing a Form I-589. Chan Decl. ¶¶ 8-9. Petitioner was transferred closer to the immigration court (specifically to the Plymouth County Correctional Facility in Plymouth, Massachusetts) on November 25, 2024. Chan Decl. ¶ 10.

On December 3, 2024, an immigration judge granted Petitioner asylum. Chan Decl. ¶ 11. ICE then appealed the immigration judge's decision to the Board of Immigration Appeals on January 3, 2025. Chan Decl. ¶ 12; 8 U.S.C. § 1158(d)(5)(A)(iv). ICE transferred Petitioner to Federal Correctional Institution Berlin in Berlin, New Hampshire two months later, on March 5, 2025. Chan Decl. ¶ 13.

Briefing in the BIA began on April 7, 2025 when ICE filed its opening brief. Chan Decl. ¶ 14. On June 9, 2025, the BIA requested supplemental briefing, and both parties (including Petitioner through immigration counsel) filed additional briefs on July 1, 2025. Chan Decl. ¶¶ 15-16. The appeal remains pending in the BIA. Chan Decl. ¶ 16.

On August 20, 2025, ICE transferred Petitioner to its office in Burlington, Massachusetts, and the next day to Northwest State Correctional Center in Swanton, Vermont where he remains. Chan. Decl. ¶¶ 17-18. ICE does not have information or knowledge indicating that Petitioner has requested release on parole. Chan Decl. ¶ 21.

ARGUMENT

I. Petitioner's detention is required by 8 U.S.C. § 1225(b)(1)(B).

Petitioner's Fifth Amendment due-process claim appears to be based on his allegation that "it is completely unclear what the basis of his continued detention is because he has had limited access to counsel and nothing in any of the DHS or ICE systems indicate any hearings in Immigration Court." Pet. ¶ 36. The basis of Petitioner's detention, following his asylum claim, is 8 U.S.C. § 1225(b)(1)(B), which requires detention until the asylum proceedings have concluded. Because Petitioner admits that the asylum proceedings remain ongoing, his detention is lawful and the petition for writ of habeas corpus should be denied.

At the outset, individuals like Petitioner who arrive in the United States as stowaways are subject to mandatory detention and potentially summary removal. Under 8 U.S.C. § 1225(a)(2), "[a]n arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer." And "[i]n no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a." *Id.* Indeed, those in control of the vessel or aircraft in which the individual stowed away are

"required to detain the stowaway on board the vessel or aircraft, at the expense of the owner of the vessel or aircraft, until completion of the inspection of the alien by an immigration officer." 8 C.F.R. § 241.11(a). "No notice to detain the alien shall be required," *id.*, and "[f]ollowing inspection an immigration officer may order" the stowaway repatriated on the vessel or aircraft on which he arrived, *id.* § 241.11(c)(1).

When, as Petitioner did here, a stowaway indicates an intention to apply for asylum, he is referred for a credible fear interview. *Id.* § 241.11(d)(1); 8 U.S.C. § 1225(a)(2) ("if the alien indicates an intention to apply for asylum . . . or a fear of persecution, the [immigration] officer shall refer the alien for an interview under subsection (b)(1)(B)"). At that point, detention is mandatory under both the statute and regulations.

Under section 1225(b)(1)(B)(ii), if the inspecting officer determines that the applicant has a credible fear of persecution, the applicant "shall be detained for further consideration of the application for asylum." The regulations governing stowaways like Petitioner similarly require detention: "The stowaway shall be detained in the custody of [DHS] pending the credible fear determination *and any review thereof*." 8 C.F.R. 241.11(d)(1) (emphasis added). The regulations further provide that for any "stowaway who has established a credible fear of persecution," that person "may be detained or paroled pursuant to § 212.5 of this chapter during any consideration of the asylum application." *Id.*

That process—created by Congress—is the process that Petitioner was due and the process that he received. *See Dept' of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (an alien detained after arriving at a port of entry "has only those rights regarding admission that Congress has provided by statute"). Petitioner was initially detained as a stowaway, Chan Decl. ¶ 6,

and once he indicated his intention to apply for asylum, he was detained as required by 8 U.S.C. § 1225(b)(1).

The Supreme Court has recognized the validity of detaining asylum applicants: "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §[ ] 1225(b)(1) . . . ." *Jennings v. Rodriguez*, 538 U.S. 281, 289 (2018). And that detention is mandatory through the conclusion of the asylum proceeding, that is, until any grant or denial of asylum becomes final. "Section 1225(b)(1) mandates detention for 'further consideration of the application for asylum.'" *Id.* at 299 (quoting 8 U.S.C. § 1225(b)(1)(B)(ii)). According to the Supreme Court, "[t]he plain meaning of th[at] phrase[] is that detention must continue until immigration officers have finished 'consider[ing]' the application for asylum." *Id.* In other words, section 1225(b)(1) "mandate[s] detention of aliens throughout the completion of applicable proceedings . . . ." *Id.* at 302.

Here, the Immigration Judge's grant of asylum is on appeal and has been fully briefed before the BIA. Chan Decl. ¶ 16; *see BIA Practice Manual*, ch. 1.4, *available at* https://www.justice.gov/eoir/reference-materials/bia/chapter-1/4 (noting that the BIA generally has jurisdiction to review decisions of Immigration Judges pertaining to asylum). Until the BIA renders a decision (and pending any appeal to an appropriate federal court of appeals and the Supreme Court)—when the asylum "proceedings have concluded"—detention under section 1225(b)(1) is mandatory. *Jennings*, 538 U.S. at 297. And "[u]ntil that point . . . nothing in the statutory text imposes any limit on the length of detention." *Id.*

The Attorney General has the statutory authority to temporarily parole individuals detained under section 1225(b)(1), but only for "urgent humanitarian reasons or significant public benefit." *Jennings*, 538 U.S. at 300. Respondents have no knowledge of Petitioner making such a request,

Chan Decl. ¶ 21, nor does Petitioner offer any facts or make an argument in this Court that such a temporary parole is warranted. "That express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Jennings*, 538 U.S. at 300.

Put simply, the law mandates that Petitioner be detained until his asylum proceedings have concluded. Because those proceedings remain ongoing, there is no basis on which to grant a writ of habeas corpus.

II. Petitioner fails to state a cognizable claim under the Fourth Amendment.

Petitioner's alleged Fourth Amendment violation also appears based on his continued detention. Pet. ¶¶ 27-28. He alleges that ICE "continues to detain Mr. Rashid without a clear or lawful justification," which he contends is "in violation of Mr. Rashid's rights under the Fourth Amendment to the United States Constitution." Pet. ¶ 28. The Fourth Amendment protects against unreasonable searches and seizures, U.S. Const. amend. IV, not allegedly prolonged detention. This claim sounds in due process, and is not a basis to grant a writ of habeas corpus for the reasons described above: his detention is authorized by 8 U.S.C. §1225(b)(1) until the asylum process concludes.

To the extent Petitioner alleges a standalone violation of the Fourth Amendment, release under habeas is not an appropriate remedy. When a Fourth Amendment violation occurs, the typical remedy—the exclusionary rule—generally does not apply to subsequent civil deportation proceedings. *See United States v. Kisyorgy*, 2010 WL 3323675, at *4 (D. Vt. Apr. 23, 2010) (citing *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984)). Indeed, "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred."

Lopez-Mendoza, 468 U.S. at 1039; *Pretzantzin v. Holder*, 736 F.3d 641, 646 (2d Cir. 2013) ("Because an individual cannot escape a tribunal's power over his 'body' despite being subject to an illegal seizure en route to the courthouse, he cannot contest that he is, in fact, the individual named in the charging documents initiating proceedings.").

Because an individual's identity is not suppressible, district courts have recognized that habeas is not an appropriate means to seek release on Fourth Amendment grounds pending removal proceedings. *See, e.g.*, *H.N. v. Warden, Stewart Det. Ctr.*, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) ("[E]ven if the Court accepted Petitioner's argument that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); *Jorge S. v. Sec'y of Homeland Sec.*, 2018 WL 6332717, at *4 (D. Minn. Nov. 15, 2018), *report and recommendation adopted*, 2018 WL 6332507 (D. Minn. Dec. 4, 2018) ("Release from Jorge S.'s *current* detention because his detention *previously* had been unlawful would be a remedy ill-fitted to the specific injury alleged.") (emphasis in original); *Amezcua-Gonzalez v. Lobato*, 2016 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016), *report and recommendation adopted sub nom. Amezcua-Gonzalez v. Lobato*, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016) ("[E]ven if petitioner's arrest amounts to an egregious Fourth Amendment violation, he is not entitled to habeas relief, and his petition should be denied."). So even if a Fourth Amendment violation occurred here, Petitioner would not be entitled to release because he cannot suppress his identity and status in connection with the proceedings upon which her detention is based.

III. Petitioner fails to state a cognizable claim under 8 U.S.C. § 1226(a).

Petitioner's contention that his detention is unlawful "because at the time of his arrest and current [sic]—upon information and belief—he was not arrested on a warrant issued by the Attorney General" does not warrant habeas relief because section 1226(a) does not apply.

Section "1226 applies to aliens already present in the United States." *Jennings*, 583 U.S. at 303. Because he arrived as a stowaway and was detained at a port of entry, Petitioner was not "already present in the United States" when he was detained. *Id.*; 8 U.S.C. § 1225(a)(2) ("An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. . . . In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a."). Accordingly, any warrant requirement in section 1226 did not—and does not—apply.

IV. The Court lacks subject-matter jurisdiction to the extent that Petitioner is challenging the asylum procedures or any discretionary action.

Although not clear in the petition or motion for temporary restraining order, to the extent that Petitioner is challenging the process by which his asylum claim is adjudicated, this Court lacks subject-matter jurisdiction to consider those arguments. And to the extent he is challenging any discretionary decision not to grant parole or to detain him pending the appeal to the BIA, this Court likewise lacks subject-matter jurisdiction to consider those challenges.

First, 8 U.S.C. § 1252(a)(1)(2)(A) provides that "no court shall have jurisdiction to review . . . "procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title." Instead, courts have only sharply limited jurisdiction to review habeas petitions concerning section 1225(b)(1) decisions. 8 U.S.C. § 1252(e). Courts can consider only (1) whether the petition is an alien, (2) whether the petitioner was ordered removed, and (3) whether the petitioner can prove that was lawfully admitted or granted asylum. Thus, if Petitioner is challenging the speed at which the BIA is deciding his case, this Court lacks jurisdiction to consider that challenge.

Second, under 8 U.S.C. § 1252(a)(2)(B)(ii), "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the

authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security . . . ." To be clear, Federal Respondents have no information to suggest Petitioner has requested humanitarian parole, Chan Decl. ¶ 21, but in any event, such a parole decision is the type of discretionary decision that courts cannot review under section 1252(a)(2)(B)(ii). 8 C.F.R. § 212.5(a) ("The Secretary or his designees may invoke, in the exercise of discretion, the authority [to grant parole] under section 212(d)(5)(A) of the Act.").

V. The temporary restraining order should be dissolved.

"A principal feature of the removal system is the broad discretion exercised by immigration officials." *Arizona v. United States*, 567 U.S. 387, 396 (2012). Decisions where to detain an alien pending removal proceedings are within the discretion of the Secretary of Homeland Security and therefore may not be reviewed or enjoined by the district courts. *See* 8 U.S.C. § 1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."). The INA precludes judicial review over such discretionary decisions. *See* 8 U.S.C. § 1252(a)(2)(B)(ii). Here, the Executive's authority under § 1231(g) to decide the location of detention for individuals detained pending asylum proceedings falls within § 1252(a)(2)(B)(ii)'s scope and is therefore barred from judicial review. That is because, under section 1231(g), DHS "necessarily has the authority to determine the location of detention of an alien in deportation proceedings," including whether to change that location during the pendency of proceedings. *Gandarillas-Zambrana v. Bd. Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995).

Courts have routinely refused to review the Executive's exercise of its broad discretion in this area. *See, e.g., Wood v. United States*, 175 F. App'x 419, 420 (2d Cir. 2006) (holding that the Secretary "was not required to detain [Plaintiff] in a particular state" given the Secretary's

"statutory discretion" under § 1231(g)); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (holding that "a district court has no jurisdiction to restrain the Attorney General's power to transfer aliens to appropriate facilities by granting injunctive relief"); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985) ("We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide."). Accordingly, the Court should dissolve the temporary restraining order barring the transfer to any detention facility outside the District of Vermont.

CONCLUSION

The Court should deny the petition for a writ of habeas corpus and dissolve the temporary retraining order.

Dated: September 4, 2025

Respectfully submitted,

MICHAEL P. DRESCHER
Acting United States Attorney

By: /s/ *Matthew J. Greer*
MATTHEW J. GREER
Assistant United States Attorney
United States Attorney's Office
P.O. Box 570
Burlington, Vermont 05402-0570
(802) 951-6725
Matthew.Greer@usdoj.gov

Attorney for Federal Respondents