

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ENAYETULLAH WALIZADA,)

Petitioner,)

v.)

Case No. 2:25-cv-768

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; GREG HALE, Superintendent,)

Northwest State Correctional Facility – Saint)

Albans;)

Respondents.)

**FEDERAL RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS
CORPUS AND 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; 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 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 Enayetullah Walizada'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. 6, and the Court's Order to Show Cause, ECF No. 7.

PRELIMINARY STATEMENT

Petitioner Enayetullah Walizada alleges that Respondents "have failed to articulate a clear or legally sufficient basis for his detention," Pet. ¶ 5, and that "it is entirely unclear why Enayetullah has been held by CBP and ICE for over ten days," Pet. ¶ 30. But since the time Petitioner arrived in the United States in 2021, he has been an applicant for admission under 8 U.S.C. § 1225 and subject to mandatory detention. Although Petitioner was granted parole, that parole has expired, and thus when CBP encountered Petitioner on September 5, 2025, he had no lawful status and was detained and placed into removal proceedings. His detention is therefore lawful, and the petition should be denied.

Further, to the extent that Petitioner challenges the initiation of removal proceedings, this Court lacks subject-matter jurisdiction to consider that challenge. 8 U.S.C. § 1252(g). If Petitioner wishes to contest his removal, his recourse lies in the immigration court. 8 U.S.C. § 1252(b)(9).

FACTUAL BACKGROUND

Petitioner Enayetullah Walizada is a citizen of Afghanistan who arrived at Dulles International Airport in Virginia on August 29, 2021. Ex. A (Decl. of William West) ¶¶ 4, 7. At that time,

he was paroled into the United States for three years through Operation Allies Refuge. Ex. A ¶ 7. On November 1, 2023, Petitioner's parole was extended until August 28, 2025, with no further extension requested after that. Ex. A ¶ 8.

While paroled in the United States, Petitioner filed an application for asylum. Pet. ¶ 1. That application is pending. Pet. ¶ 6. Petitioner was also granted an Employment Authorization Document, and he was employed as a truck driver. Pet. ¶ 3.

On September 5, 2025, Petitioner alleges that he "unintentionally made a wrong turn, which resulted in an inadvertent exit from the United States." Pet. ¶ 3. Petitioner then underwent primary inspection by CBP officers at the Derby Line, Vermont Port of Entry. Ex. A. ¶¶ 5-6. Petitioner presented his Employment Authorization Document and stated that he did not have a passport in his possession. Ex. A ¶ 6. Petitioner's passenger claimed that they were transporting food to California and were led by GPS to Canada. Ex. A ¶ 6. After being found inadmissible by Canada Border Services Agency, they returned to the United States. Ex. A ¶ 5.

After being referred for secondary inspection, CBP's record checks revealed that Petitioner's parole had expired on August 28, 2025. Ex. A ¶¶ 7-8. Because Petitioner did not have valid status in the United States, CBP issued him a discretionary Notice to Appear, which Petitioner signed, Ex. B, and placed him in full removal proceedings under 8 U.S.C. § 1229a. Petitioner has a master calendar hearing in immigration court scheduled for October 9, 2025. Ex. B.

ARGUMENT

After Petitioner's parole expired, he reverted to the position he held upon arrival at Dulles Airport: an applicant for admission. Because Petitioner lacked any valid entry document entitling him to be admitted to or present in the United States, CBP found him to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed him in full removal proceedings. And under 8 U.S.C. § 1225(b), applicants for admission are subject to mandatory detention pending any removal

proceedings. Petitioner's detention is therefore lawful, and the Court should decline to issue a writ of habeas corpus.

To the extent Petitioner is challenging his placement in removal proceedings, this Court lacks subject-matter jurisdiction to consider that challenge. 8 U.S.C. § 1252(g). His recourse lies in immigration court where he can contest the basis for his removal, request parole, and litigate his asylum claim. 8 U.S.C. § 1252(b)(9).

I. When Petitioner's parole expired, he reverted to being an applicant for admission.

When Petitioner arrived at Dulles Airport on August 29, 2021, he was paroled into the United States through Operation Allies Refuge for a period of three years. Ex. A ¶ 7. Petitioner's parole was subsequently extended until August 28, 2025. Ex. A ¶ 8. That humanitarian parole was authorized under 8 U.S.C. § 1182(d)(5)(A), which gives the Secretary of Homeland Security discretion to issue it on a case-by-case basis. By its nature, humanitarian parole is temporary, and it "shall not be regarded as an admission of the alien" to the United States. *Id.* And when the term of humanitarian parole expires, the parolee "shall forthwith return or be returned to the custody from which he was paroled." *Id.* After that, "his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Here, Petitioner's humanitarian parole expired on August 28, 2025, Ex. A ¶ 8, and section 1182(d)(5)(A) thus directs that he "shall forthwith return" to custody. Petitioner once again became an "applicant for admission" to the United States with no entitlement to be admitted or present in the United States. *Id.*; *see also* 8 C.F.R. § 1.2 (an applicant for admission is an "arriving alien" who "remains an arriving alien even if paroled . . . and even after any such parole is terminated or revoked").

II. Because Petitioner lacked any valid entry document, he is inadmissible.

When CBP encountered Petitioner at the Derby Line, Vermont Port of Entry on September 5, 2025, Petitioner was an applicant for admission whose request to be admitted the United States was “dealt with in the same manner as that of any other applicant for admission” 8 U.S.C. § 1182(d)(5)(A). Applicants for admission to the United States generally must present a valid travel document to be eligible for admission. *See* 8 U.S.C. § 1181; 8 C.F.R. § 211.1. If the applicant for admission

is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document . . . and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181 . . .

that person is “inadmissible.” 8 U.S.C. § 1182(a)(7)(A)(i)(I).

With his parole having expired, Petitioner did not have, and does not allege that he had, any valid entry document required for admission to the United States as of September 5, 2025. That is why, upon inspection, CBP found him to be inadmissible. Ex. B (Notice to Appear). Petitioner then could have been subject to expedited removal proceedings under 8 U.S.C. § 1225(b)(1)(A)(i) (if immigration officer finds applicant inadmissible under section 1182(a)(7), “the officer shall order the alien removed from the United States without further hearing or review”). CBP exercised its discretion, however, and issued Petitioner a Notice to Appear that commenced full removal proceedings under 8 U.S.C. § 1229a. Ex. B; *see* 8 U.S.C. § 1229a(a)(2) (“An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a)”).

III. As an applicant for admission, Petitioner's detention is required by 8 U.S.C. § 1225(b), and he cannot establish any constitutional violation.

Because Petitioner is an applicant for admission with ongoing removal proceedings under section 1229a, his detention for the duration of those proceedings is mandatory. 8 U.S.C. § 1225(b)(2)(A) (requiring that an applicant for admission “shall be detained for a [removal] proceeding under section 1229a . . .”). Petitioner also alleges that he has an asylum application pending, Pet. ¶ 1, and as an asylum applicant, his detention is independently required until the asylum proceedings have concluded. 8 U.S.C. § 1225(b)(1)(B)(ii) (an asylum applicant “shall be detained for further consideration of the application for asylum”). In short, both sections 1225(b)(1) and 1225(b)(2) “require that any applicant for admission remain detained until their asylum application is fully adjudicated or until removal proceedings conclude.” *Rodriguez v. Bondi*, No. 25-cv-791, 2025 WL 2490670, at *2 (E.D. Va. June 24, 2025); *see also Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (“The plain meaning of those phrases is that detention must continue until immigration officers have finished ‘considering’ the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).”) (cleaned up).

At bottom, individuals like Petitioner “who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Dept’ of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (citing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For such individuals, due process requires only “those rights regarding admission that Congress has provided by statute.” *Id.* at 140. Under the system Congress devised, detention is mandatory for applicants for admission in Petitioner’s situation, and the Supreme Court has recognized that detention is “a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Petitioner’s detention is plainly lawful, so he cannot meet his burden to establish constitutional violations. On his due-process claim, Petitioner is in full removal proceedings, so he is receiving the process he is due. *See Thuraissigiam*, 591 U.S. at 139. And those removal proceedings have only recently commenced—he has a master calendar hearing scheduled for October 9, 2025, Ex. B—so his roughly three-week detention does not come close to being impermissibly prolonged. *See Jennings*, 583 U.S. at 297 (“nothing in the statutory text imposes any limit on the length of detention”); *see also, e.g., Ramos Funes v. Searles*, No. 19-6332, 2020 WL 1956346, at *16 (W.D.N.Y. Apr. 23, 2020) (denying habeas petition where petitioner detained under section 1225 for three years). The petition also includes a single, conclusory invocation of the Fourth Amendment. Pet. at 8. There are no factual allegations in the pleadings that would support a Fourth Amendment claim, and in any event, habeas relief would be unavailable because the typical remedy—the exclusionary rule—generally does not apply in subsequent civil deportation proceedings. *See United States v. Kiszyorgy*, No. 09-cr-81, 2010 WL 3323675, at *4 (D. Vt. Apr. 23, 2010) (citing *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984)).

IV. This Court lacks subject-matter jurisdiction to consider any challenge to the initiation of removal proceedings.

The petition appears to be based only on the contention that there is no valid basis to detain Mr. Walizada. *See, e.g.,* Pet. ¶ 5 (alleging that Respondents “have failed to articulate a clear or legally sufficient basis for his detention”). To the extent that Petitioner also contests the initiation of removal proceedings against him, this Court lacks subject-matter jurisdiction and should dismiss the petition.

Congress stripped district courts of “jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary] to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]” 8 U.S.C. § 1252(g). “In other words,

Congress has stripped District Courts of jurisdiction to decide all legal and factual questions related to an alien’s eligibility for removal.” *Guzman v. Barr*, 2021 WL 135909, at *3 (S.D.N.Y. Jan. 14, 2021) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999)). Courts across the country, including the Second Circuit, have recognized the limitation on district-court jurisdiction. *See, e.g., Ali v. Mukasey*, 524 F.3d 145, 450 (2d Cir. 2008); *Tazu v. Att’y Gen.*, 975 F.3d 292, 296, 298 (3d Cir. 2020) (holding that § 1252(g) bars statutory and constitutional challenges to the commencement, adjudication, and execution of removal proceedings in district court); *Guo Xing Song v. U.S. Att’y Gen.*, 516 F. App’x 894, 897 (11th Cir. 2013) (“To the extent that Song challenges DHS’s decision to commence expedited removal proceedings against him, we lack jurisdiction to review this claim.”).

Accordingly, if Petitioner contends that there was no basis on which to initiate removal proceedings, that claim is barred by section 1252(g) and the petition should be dismissed for lack of subject-matter jurisdiction. Further, all other challenges Petitioner may wish to bring to his removability must be litigated in immigration court and then in a petition for review in the appropriate court of appeals after a final order of removal issues. 8 U.S.C. §§ 1252(b)(9), 1252(a)(2)(D).

V. The TRO should not extend beyond the limits of Rule 65(b).

On September 17, 2025, this Court granted Petitioner’s Emergency Motion for Temporary Restraining Order and ordered *ex parte* that he “not be removed from the District of Vermont pending further Order of this court.” ECF No. 6, at 2. Under Federal Rule of Civil Procedure 65(b), *ex parte* TROs expire 14 days after entry “unless before that time the court, for good cause, extends it for a like period” Accordingly, the outer time limit on the TRO is 28 days—here, October 15, 2025—and only if the Court finds on the record good cause for extension beyond the initial 14 days. Here, Petitioner is detained as required by statute, so the petition can be adjudicated expeditiously in accordance with Rule 65 and 28 U.S.C. § 2243.

CONCLUSION

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

Dated: September 24, 2025

Respectfully submitted,

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