

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

JEFF BENSON BEAUBRUN

Petitioner,

v.

WILLIAM BARR, Attorney General;

KEVIN K. MCALEENAN, Acting Secretary
of Department of Homeland Security;

MARCOS CHARLES, Immigration and
Customs Enforcement, Enforcement and
Removal Operations, Acting Field Office
Director;

CHRISTOPHER BRACKETT,
Superintendent of the Strafford County
Department of Corrections;

Respondents.

Case No.: 1:19-cv-00835

EMERGENCY MOTION TO STOP TRANSFER AND REMOVAL
(EMERGENCY HEARING REQUESTED)

Petitioner Jeff Benson Beaubrun (hereinafter “Petitioner” or “Mr. Beaubrun”) hereby moves this Court to stop federal Respondents’ (“the government”) plan to transfer and remove Petitioner to Haiti temporarily. Petitioner learned on August 12, 2019 – today – that he will be transferred to Louisiana on August 13, 2019 – tomorrow – for the purpose of deporting Petitioner to Haiti. Federal Respondents object this motion.¹

¹ Undersigned counsel reached out to the United States and confirmed that the government objects this motion.

Petitioner argues that he should not be transferred to Louisiana on two grounds: (1) Petitioner's transfer to Louisiana would arguably deprive this Court of jurisdiction to hear a claim that is properly before it and (2) because Petitioner faces persecution if removed to Haiti before his motion to reopen is pending, this Court's habeas jurisdiction should extend to a review of his removal. If Petitioner is removed to Haiti while his appeal of his motion to reopen remains pending at the Bureau of Immigration Appeals ("BIA"), there is a high likelihood that Petitioner will be persecuted by Fanmi Lavalas ("LAVALAS") party members because of his political opinion. This Court has already granted relief based on similar circumstances. *See Compere v. Nielsen*, 358 F. Supp. 3d 170 (D.H.N. 2019) (Barbadoro, J.) (holding that government's plan to deport petitioner to Haiti while his motion to reopen is pending violated his due process rights).

ARGUMENT

The government's plan to transfer Petitioner to Louisiana to deport him to Haiti raises serious constitutional concerns and thus this Court should immediately stop the transfer. Because his transfer is inextricably linked to his removal to Haiti, the issue that his transfer raises is that he will be removed to Haiti before his motion to reopen before the BIA can be adjudicated. While this transfer would not ordinarily raise a constitutional issue, this Court has held that removing a petitioner to Haiti where he will face persecution during the pendency of his motion to reopen process would violate federal law, including the Suspension Clause. *See Compere v. Nielsen*, 358 F. Supp. 3d 170 (D.H.N. 2019)

Article I of the U.S. Constitutional provides that, "[t]he privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety

may require it.” U.S. Const. art. I, § 9, cl. 2. In the immigration context, the Supreme Court has upheld habeas review of a challenge to removal order finding that the unavailability of such review would raise Suspension Clause problems. *INS v. St. Cyr*, 533 U.S. 289 (2001). As the Supreme Court explained, the Suspension Clause “unquestionably requires some jurisdiction in deportation cases.” *Id.* at 300 (quoting *Heikkila v. Barber*, 345 U.S. 229, 235 (1953)); *see also id.* at 305 (“[T]o conclude that the writ is no longer available in this context would represent a departure from historical practice in immigration law.”).

Congress may eliminate habeas jurisdiction in certain cases without running afoul of the Suspension Clause as long as adequate and effective alternatives to habeas corpus relief are provided. *See St. Cyr*, 533 U.S. at 314 n.38 (“Congress could, without raising any constitutional questions, provide an adequate substitute through the courts of appeals.”); *Swain v. Pressley*, 430 U.S. 372, 381 (1977) (holding that “the substitution of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person’s detention does not constitute a suspension of the writ of habeas corpus”).

In general, this Court does not have jurisdiction to stop removal because of the jurisdiction-stripping provisions. *See Higgins v. Strafford County*, 2018 DNH 050; *Fillippi v. President of the United States*, 2017 DNH 221; *Veth v. Whitaker*, 2018 DNH 252. However, this Court has held that the Suspension Clause will be violated if the Court denies a petitioner’s habeas corpus relief “and alternative remedies are inadequate.” *Compere*, 358 F. Supp. 3d at 179 (quoting *Boumediene v. Bush*, 553 U.S. 723, 792 (2008)); *Hussein v. Strafford County*, 2018 U.S. Dist. LEXIS 82405, 2018 DNH 101, 14 (D.N.H. May 16, 2018).

The present case is analogous to *Compere*. Similar to Mr. Compere, Petitioner faces persecution and possible torture upon his removal to Haiti during the pendency of his motion to

reopen process. While there is no expert affidavit has been submitted yet, undersigned counsel communicated with Mr. Brian Concannon—an expert in Haitian affairs and advisor to the executive director at the Institute for Justice & Democracy in Haiti—on August 12, 2019 around 12:44 PM. In this conversation, Mr. Concannon confirmed that it would be difficult for Petitioner to litigate his motion to reopen upon his removal because of the possible persecution. A declaration with this opinion is forthcoming.

Further, it is not clear that this Court would continue having jurisdiction over Petitioner's claims after his transfer to Louisiana tomorrow because of the immediate custodian rule.

Vasquez v. Reno, 233 F.3d 688 (1st Cir. 2000).

Based upon the foregoing reasons, Petitioner respectfully requests that the Court stop Petitioner's transfer to Louisiana.

Respectfully submitted this 12th day of August, 2019.

JEFF BENSON BEAURUN,

By and through his Counsel,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

Henry R. Klementowicz (NH Bar: 21177)

SangYeob Kim (NH Bar: 266657)

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion along with the habeas corpus petition have been served on the U.S. Attorney's Office in New Hampshire via email to AUSA David Plourde.

/s/ SangYeob Kim
SangYeob Kim (NH Bar: 266657)