

**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.: _____

EMERGENCY¹ PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Jeff Benson Beaubrun (hereinafter “Petitioner” or “Mr. Beaubrun”) brings this petition for a writ of habeas corpus and a writ of mandamus (i) to challenge the Department of Homeland Security’s (“the government”) plan to remove him to Haiti without providing an interview to determine whether his fear of persecution and torture is credible or reasonable and

¹ A separate emergency motion to stop the transfer is attached.

(ii) to stop his imminent removal until the Bureau of Immigration Appeals (“BIA”) rules on his motion to reopen.

If Petitioner is removed to Haiti while the appeal of his motion to reopen remains pending, 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).

Petitioner initially came to the United States after being attacked by LAVALAS party members. After presenting himself to the border, he was released on parole after the initial credible fear interview. However, after the government’s announcement on its new immigration policy with respect to Haitians in 2017, he had a misunderstanding that the asylum process was entirely foreclosed. Hence, he fled the United States to Canada in July 2017 because he needed protection.

On January 25, 2018, the Immigration Judge in Miami, Florida, ordered Petitioner to be removed to Haiti in his absence. Petitioner’s asylum claim in Canada was rejected due to the Safe Third Country Agreement between the United States and Canada, which would not allow an asylum seeker to pursue protection claims in Canada if the person had applied for the same claim in the United States. Because he could not go back to Haiti, he came back to the United States unlawfully. The government immediately detained him on March 8, 2019, and transferred him to the Strafford County Department of Corrections in Dover, New Hampshire. He has been detained in the government’s custody since March 8, 2019.

As a new applicant for admission, Petitioner sought a reasonable fear interview with the government. However, the government decided not to provide an interview for him because he was neither deported nor voluntarily departed after receiving the final order of removal. As soon as he learned about the refusal to provide an interview, he filed the motion to reopen with the Immigration Judge (“IJ”) in Miami, Florida. His motion was denied without any written opinion. After that, he appealed the decision to the BIA along with a motion to stay deportation. He is still waiting for the briefing schedule, and his motion to stay deportation is pending. Petitioner was informed on August 12—today—that he will be transferred to Louisiana to be deported to Haiti on August 13, 2019 – tomorrow.

Petitioner seeks immediate prevention of his transfer and removal to Haiti because he will not be able to litigate his motion to reopen upon removal to Haiti due to persecution.

Petitioner further alleges as follows:

PARTIES

1. Petitioner Jeff Benson Beaubrun was detained by the government on or about March 8, 2019. He remains in immigration custody at the Strafford County Department of Corrections in Dover, New Hampshire.

2. Respondent Kevin McAleenan is the Acting Secretary of the United States Department of Homeland Security. He is sued in his official capacity.

3. Respondent Marcos Charles is the Acting Field Office Director of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operation, of Boston Field Office. He is sued in his official capacity.

4. Respondent Christopher Brackett is the Superintendent of the Strafford County Department of Corrections and is Petitioner's immediate custodian. He is sued in his official capacity.

JURISDICTION

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

6. The federal district courts have jurisdiction to hear habeas claims by non-citizens contesting the lawfulness of their immigration detention. *Aguilar v. Immigration & Customs Enforcement Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007) (citing *Demore v. Kim*, 538 U.S. 510, 516 (2003)).

7. For removal claims, generally, a challenge to removal must be raised in the court of appeals by petition for review from a decision of the BIA. *See id.* (explaining that Congress intended to channel immigration disputes into administrative proceedings). However, the provisions of the REAL ID Act of 2005 set forth at 8 U.S.C. § 1252 ("jurisdiction-stripping provisions"), which strip jurisdiction of this Court's habeas corpus review power, are not applicable in this case.

8. More specifically, even if the jurisdiction-stripping provisions applied, they cannot be used to deny Petitioner's right to habeas corpus relief in this case without violating the Constitution's Suspension Clause. The Suspension Clause is "violated where habeas corpus relief is foreclosed 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); *see also Devitri v. Cronen*,

290 F. Supp. 3d 86, 93 (D. Mass. 2017) (“*Devitri I*”) (concluding that “[i]f the jurisdictional bar in 8 U.S.C. § 1252(g) prevented the Court from giving Petitioners an opportunity to raise their claims [for post-order of removal Motions to Reopen based on changed circumstances] through fair and effective administrative procedures, the statute would violate the Suspension Clause as applied.”). In this case, if Petitioner is removed from the United States to Haiti without having an opportunity to apply for asylum, withholding of removal, and the Convention Against Torture (“CAT”), then the application of the jurisdiction-stripping provisions would violate the Suspension Clause in this case, as they would preclude Petitioner’s habeas corpus relief.

VENUE

9. Venue is proper in the District of New Hampshire because Petitioner is currently detained at the Strafford County Department of Corrections in Dover, New Hampshire, in the territorial jurisdiction of this Court. 28 U.S.C. § 1391.

FACTS (APPLIED TO ALL COUNTS)

10. Petitioner was born on April 8, 1989 in Port-au-Prince, Haiti. He is a citizen and national of Haiti. He has been a member of Parti Haïtien Tèt Kale (PHTK), a political party in Haiti, since 2012. He regularly attended party meetings and was in charge of recruiting individuals for the party. He had one son, Djousenelie Estimable, who was born on April 5, 2014 to his Haitian wife, Jeandeline Estimable. Petitioner’s son passed away on or around July 6, 2018. His wife, who is in Canada, gave birth recently to another child.

11. On October 25, 2015, as a member of PHTK, Petitioner was stationed at one of the election sites with two other PHTK representatives in Croix des Bouquex for the presidential

election. While he was at the site, a group of three men, two of whom were members of the LAVALAS political party, entered and attacked him. The third man, Guichard Dore, was a member of Petitioner's PHTK party. Petitioner was unsure whether Mr. Dore was with the group to protect or attack Petitioner, but on October 25, 2015, Mr. Dore did neither.

12. One LAVALAS attacker pulled out a gun while another had a pitchfork. They told him that they were going to kill him because they believed that PHTK was stealing votes from the LAVALAS party. They slapped him in the face with his phone. After falling to the ground, the man holding the pitchfork lunged the pitchfork at his chest. They repeatedly stabbed him with the object. They also kicked him in the head and hit him again and again. They ran off after bystanders outside of the voting site entered the site to protect Petitioner. Because of this attack, Mr. Beaubrun and his wife feared future attacks. Hence, Petitioner left Haiti for the Dominican Republic that same day, October 25, 2015.

13. Petitioner later learned from his uncle Colbert Beaubrun and his sister Maniese Beaubrun that the PHTK member who arrived with his attackers, Mr. Dore, also intended to harm Petitioner. Some members of the PHTK believed Petitioner was secretly soliciting votes for a third party, the Platfòm Pitit Desalin, but Petitioner was not. However, this misunderstanding has put him at risk of persecution by some of his own party members.

14. Petitioner received medical treatment for his wounds in the Dominican Republic. On November 6, 2015, Petitioner left the Dominican Republic to come to the United States. Respondent arrived at San Ysidro, California, on March 6, 2016.

15. On March 6, 2016, Petitioner was paroled into the United States through Ysidro, California. On March 9, 2016, the government placed him in removal proceedings. On March 3, 2017, Petitioner, through his counsel, submitted an I-589 application for asylum and

withholding of removal, along with his PHTK membership card and other documents, to the Miami Immigration Court. On July 3, 2017, Petitioner submitted a second notice of filing to the Court with the witness list and supplemental exhibits.

16. On October 20, 2017, the IJ granted the counsel's motion to withdraw. On January 25, 2018, Petitioner failed to appear at his hearing because he had fled the United States to Canada because he feared that he was not going to be granted asylum due to perceived executive branch policies concerning Haitian asylum applicants.

17. Petitioner (incorrectly) believed that his asylum claim was foreclosed due to the government's new immigration policy on Haitians. Despite his protection claim in Canada, the Canadian government rejected his application because of the Safe Third Country Agreement, which would not allow him to seek asylum protection in Canada if he had already pursued the same claim in the United States.

18. Because he fears to go back to Haiti, he re-entered the United States without inspection through the Canadian/Vermont border. The Customs and Border Protection ("CBP") detained him. He is currently detained at Strafford County Department of Corrections under ICE custody in Dover, New Hampshire.

19. While under ICE custody, Mr. Beaubrun sought a reasonable fear interview to the ICE, and the ICE referred the fear claim to the Newark Asylum Office. However, the Newark Asylum Office refused to provide an interview for him because he was neither deported nor voluntarily departed after receiving the final order of removal. Further, the Newark Asylum Office did not provide Petitioner with a credible fear interview.

20. After he learned the government's refusal to provide an interview, he filed a motion to reopen based on a putative charging document, lack of notice, changed circumstances

in Haiti materially affecting his eligibility for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”), and violations of the Due Process Clause.

21. On May 17, 2019, the IJ of the Miami Immigration Court denied his motion, stating only in his sentence decision that the “[c]ourt finds insufficient grounds to warrant reopening.”

22. He appealed the decision to the BIA because the IJ’s decision erred in law and discretion in his decision. He has not received the briefing schedule yet.

23. He also filed a motion to stay deportation with the BIA. The motion is still pending.

24. On August 12, 2019—today—Petitioner learned from the government that he will be transferred to Louisiana for the purpose of being deported to Haiti.

25. To stop the immediate deportation, Petitioner files this habeas corpus petition.

26. Upon his removal to Haiti, it would be difficult for him to litigate his motion to reopen because of possible persecution. Undersigned counsel contacted an expert named Brian Concannon, an advisor to the executive director at the Institute for Justice & Democracy in Haiti. He will provide an expert affidavit demonstrating Petitioner’s fear claims shortly.

CLAIMS FOR RELIEF

COUNT 1

**VIOLATION OF THE SUSPENSION CLAUSE AND DUE PROCESS CLAUSE OF
THE U.S. CONSTITUTION**

27. The foregoing allegations are realleged and incorporated herein.

28. “The 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.

29. The Suspension Clause is “violated where habeas corpus relief is foreclosed 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); *see also Devitri v. Cronen*, 290 F. Supp. 3d 86, 93 (D. Mass. 2017) (“*Devitri I*”) (concluding that “[i]f the jurisdictional bar in 8 U.S.C. § 1252(g) prevented the Court from giving Petitioners an opportunity to raise their claims [for post-order of removal Motions to Reopen based on changed circumstances] through fair and effective administrative procedures, the statute would violate the Suspension Clause as applied.”).

30. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend V.

31. In this case, if Petitioner is removed from the United States to Haiti without having an opportunity to apply for asylum, withholding of removal, and the Convention Against Torture (“CAT”), then the application of the jurisdiction-stripping provisions would violate the Suspension Clause in this case, as they would preclude Petitioner’s habeas corpus relief. Further, it would violate his due process rights to present protection claims.

REQUEST FOR ORAL ARGUMENT

32. In accordance with Local Rule 7.1(d), counsel respectfully requests oral argument.

PRAYER FOR RELIEF

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Enjoin Respondents from removing Petitioner from the United States to Haiti until he completes his motion to reopen process and to seek judicial review of that determination if necessary;

- (3). Enjoin Respondents from removing Petitioner from New Hampshire pending this Petition's claims;
- (4). 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
- (5). Order any further relief this Court deems just and proper.

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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