

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Roderico Filadelfo Perez-Perez,

Petitioner

Civil No. 25-10872

v.

Honorable Stephen J. Murphy, III
Mag. Judge Elizabeth A. Stafford

Robert Lynch, et al.,

Respondents.

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's Order to Show Cause (ECF No. 4), the federal Respondents respond as set forth below.

Petitioner Roderico Perez-Perez is a citizen of Guatemala. (Pet., ECF No. 1, PageID.4, ¶ 9). Petitioner illegally entered the United States several times. (Anderson, Ex. 1, ¶¶ 4–5, 8). In 2019, after Petitioner was arrested and pled guilty to driving under the influence of alcohol, U.S. Immigration and Customs Enforcement (ICE) initiated removal proceedings. (Pet., ECF No. 1-1, PageID.10; Anderson, Ex. 1, ¶¶ 7–8).

In December 2019, ICE detained Petitioner pending his removal proceedings at the Monroe County Jail. (Anderson, Ex. 1, ¶ 8). Petitioner requested a custody redetermination, and in January 2020, an immigration judge conducted a bond

hearing. *Id.* at ¶ 10. The immigration judge declined to release Petitioner finding that he was a danger to persons and property of the United States pursuant to 8 U.S.C. § 1226(a), as evidenced by his recent criminal history. *Id.*

Also in January 2020, Petitioner sought cancellation of his removal. *Id.* at ¶ 11. In April 2020, an immigration judge granted cancellation of removal, and the government appealed to the Board of Immigration Appeals (BIA). *Id.* at ¶¶ 14, 17. Before a ruling from the BIA, Petitioner obtained injunctive relief releasing him from immigration detention due to COVID-19. *Id.* at ¶ 15.

In February 2025, the BIA sustained the appeal and vacated the immigration judge's decision granting cancellation of removal. *Id.* at ¶ 20. The BIA ordered Perez-Perez removed to Guatemala. *Id.*

On March 11, 2025, Petitioner filed a Petition for Review with the United States Court of Appeals for the Sixth Circuit, Case No. 25-3146. *Id.* at ¶ 21. He also filed a motion for a stay of removal. *Id.*

On March 25, 2025, ICE detained Petitioner at the Monroe County Jail pending his removal from the United States. *Id.* at ¶ 22; Pet., ECF No. 1, PageID.3, ¶ 5. On March 26, 2025, the Sixth Circuit granted Petitioner's motion to stay removal. (Pet., ECF No. 1-1).

On March 28, 2025, Petitioner filed an Emergency Petition for Writ of Habeas Corpus seeking release from immigration detention. (Pet., ECF No. 1).

Petitioner failed to serve the emergency petition on the federal Respondents or the U.S. Attorney. On April 1, 2025, the Court entered an order to show cause why the writ should not be granted and directed that the Clerk of the Court serve Respondents and the U.S. Attorney. (Order, ECF No. 4).

A. ICE had authority to detain Petitioner pending his removal.

An administratively final order of removal was entered by the BIA on February 21, 2025. (Anderson, Ex. 1, ¶ 20). At that point, ICE was statutorily required to detain Petitioner pursuant to 8 U.S.C. § 1231(a)(1), (2) pending his removal. Based on that authority, ICE detained Petitioner on March 25, 2025. (Anderson, Ex. 1, ¶ 22).

B. ICE has authority to continue Petitioner's detention while his removal is stayed.

On March 26, 2025, the Sixth Circuit granted a stay of removal pending its decision on Petitioner's Petition for Review. (Pet., ECF No. 1-1). Under Sixth Circuit precedent, at that point, ICE no longer had authority to detain Petitioner under 8 U.S.C. § 1231(a)(1)(B), which provides:

The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

In *Bejjani v. I.N.S.*, 271 F.3d 670, 689 (6th Cir. 2001), relying on § 1231(a)(1)(B), the court held that where it had “ordered a stay of [the plaintiff’s] removal,” the “period of removal would not begin until the date of the Court’s final order.” The court concluded that the INS, therefore, did not have authority to detain the plaintiff under § 1231. *Id.* The court did not address under what authority then an alien who had received a stay of removal could be detained pending a final order from the court.

In *Cuello v. Adducci*, the district court recognized that Congress could not have intended the “strange result” of “a peculiar procedural window in which there is no authority to detain an alien.” No. 10-13641, 2010 WL 4226688, *4 (E.D. Mich. Oct. 21, 2010). The district court filled the gap by relying on 8 U.S.C. § 1226, which provides authority to detain an alien “pending a decision on whether the alien is to be removed from the United States.” *Id.* The district court held that 8 U.S.C. § 1226 authorizes detention “during the time between the administratively final order of removal and the removal period, whenever that period begins under the subsections of § 1231(a)(1)(B).” *Id.* See also *Hechavarria v. Sessions*, 891 F.3d 49, 57 (2d Cir. 2018) (holding that detention authority for an alien who had been “granted a stay of removal while his petition for review is pending” was “governed by” 8 U.S.C. § 1226).

In this case, after entry of the stay, ICE continued Petitioner's detention pursuant to 8 U.S.C. § 1226(a), the same authority under which he was detained before receiving a final order of removal. (Anderson, Ex. 1, ¶¶ 10, 23). Under § 1226(a), ICE may detain an alien or release them on bond. The decision to detain Petitioner under § 1226(a) was previously upheld by an immigration judge at a bond hearing. *Id.* at ¶ 10. Petitioner does not allege that he has requested a custody redetermination. (Pet., ECF No. 1). Accordingly, ICE has authority under 8 U.S.C. § 1226(a) to detain Petitioner and he fails to establish that he is entitled to release merely because his removal was stayed pending a final order.

Respectfully submitted,

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Dated: April 3, 2025

CERTIFICATION OF SERVICE

I hereby certify that on April 3, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system that will provide notice to all counsel of record.

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