UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-01151-JMB-DLM

DOĞUKAN G.,

Petitioner,

v.

DONALD J. TRUMP, *in his official capacity as President of the United States;* JOEL BROTT, *in his official capacity as the Sherburne county Sheriff;* PETER BERG, *in his official capacity as the St. Paul Field Office Director for the U.S. Immigration and Customs Enforcement;* JAMIE HOLT, *in her official capacity as Homeland Security Investigations, St. Paul Special Agent in Charge, U.S. Immigration and Customs Enforcement;* TODD LYONS, *in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;* 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,*

Respondents.

SUPPLEMENTAL RETURN TO ORDER TO SHOW CAUSE

INTRODUCTION

The Respondents respectfully submit this Supplemental Return to this Court's Order to Show Cause with the Court's permission. Since the United States filed its initial return [ECF 10] additional facts relevant to Doğukan's detention have developed. For the purpose of this case, Doğukan remains detained under 8 U.S.C. § 1226(a). His arrest and the institution of removal proceedings have always been tied to his conviction in 2024 for driving under the influence; the specific charges against him in immigration court have been amended as of April 7, 2025. His detention while the immigration court reviews the

charges against him is constitutional. This Court should deny habeas relief for the reasons stated in the Respondents' initial Response (ECF 10) and this Supplemental Response.

SUPPLEMENTAL FACTS

As set forth previously, Gunaydin, a citizen and national of Turkey, entered the United States on January 13, 2022, at O'Hare International Airport in Chicago, Illinois, on an F-1 student, nonimmigrant visa. *See* Exhibit 1 attached to the Minner declaration dated April 2, 2025 [ECF No. 11-1]. On June 24, 2023, Gunaydin was arrested in Minneapolis for driving while impaired. On March 13, 2024, he was convicted of Third Degree DWI, a gross misdemeanor charge. See Exhibit 2 attached to the Minner declaration dated April 2, 2025 [ECF No. 11-2]. This conviction forms one of the factual predicates for his arrest and institution of removal proceedings.

His arrest and removal proceedings were based on a Memorandum dated March 23, 2025, in which the Department of State (DOS) advised ICE that DOS had revoked Gunaydin's student visa under 8 U.S.C. § 1201(i). See Exhibit 3 attached to the Minner declaration dated April 2, 2025 [ECF No. 11-3]. Based on this memorandum from DOS, on March 27, 2025, ICE officials arrested Gunaydin at his residence in St. Paul, Minnesota. ICE officials processed Gunaydin and served him a Notice to Appear (Form I-862) charging him under 237(a)(1)(C)(i) of the Immigration and Nationality Act, as amended, for failing to maintain or comply with the conditions of the nonimmigrant status under which he was admitted. See Exhibit 5 attached to the Minner declaration dated April 2, 2025 [ECF No. 11-5]. Service of the NTA placed Gunaydin in removal proceedings; accordingly, ICE placed Gunaydin in immigration detention pursuant to 8 U.S.C.

§ 1226(a). On April 2, 2025, ICE Officials filed Additional Charges of Inadmissibility/Deportability, Form I-261, adding the additional allegation that DOS had "revoked [his] F-1 student visa, effective immediately, pursuant to authority in section 221(i) of the Immigration and Nationality Act, 8 U.S.C. 1201(i)." See Exhibit 6 attached to the Minner declaration dated April 2, 2025 [ECF No. 11-6].

ICE acted in good faith on the information DOS transmitted to ICE on March 23, 2025. As of March 23, 2025, DOS had revoked Gunaydin B1/B2 visa and Gunaydin's F1 visa had expired. DHS had the authority to terminate Gunaydin's student status on the basis of the information DOS provided. Declaration of William J. Robinson ("Robinson Declaration"), ¶ 9.

In the afternoon of April 4, 2025, ICE learned from the DOS that the DOS had not revoked Gunaydin's F-1 visa (because it had expired in July 2022), but rather DOS had in fact revoked Gunaydin's B1/B2 (Visitor for Business and Pleasure) visa effective immediately pursuant to Section 221(i) of the INA. The B1/B2 visa was associated with Foil [redacted] (the same Visa Foil Number DOS used in its communication to the DHS on March 23, 2025). See Declaration of Stuart R. Wilson and Exhibit 7 attached thereto; Robinson Declaration"), ¶ 10.

Based on this new, clarifying information from DOS and at the direction of ICE HQ, on April 7, 2025, ICE filed an additional charge in Gunaydin's Immigration Court proceeding. Attached hereto as Exhibit 8 is a true and accurate copy of the I-261 filed on April 7, 2025 in the Immigration Court. Robinson Declaration, ¶ 11.

The Immigration Court held a master calendar hearing Gunaydin's removal

proceedings on April 8, 2025. Robinson Declaration, ¶ 12.

The Immigration Court scheduled a *Joseph* hearing in GUNAYDIN'S case on Friday, April 11, 2025, at 8:30 a.m. Robinson Declaration, ¶ 13, Ex. 9.

The Immigration Court also scheduled a Master Calendar hearing for April 15, 2025. Robinson Declaration, ¶ 14, Ex. 10.

Gunaydin remains detained under 8 U.S.C. § 1226(a). Robinson Declaration, ¶ 15.

ARGUMENT

I. Statutory and Regulatory Authority for Doğukan's Current Detention

Doğukan remains detained under 8 U.S.C. § 1226(a), but the current charges lodged against him affect the procedures available to him for review of the detention decision in immigration court. As explained in the United States' initial response, the bond procedures generally applicable to someone in custody under 8 U.S.C. § 1226(a) are set forward in regulations. ECF 10 at 6-8. When an individual is taken into custody under § 1226(a), an Immigration and Customs Enforcement ("ICE") official makes an initial custody determination, including the setting of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d). The ICE officer may "in [his] discretion, release an alien" provided that the officer is satisfied that "the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If ICE determines that detention during the pendency of removal proceedings is necessary, the detainee may request a custody redetermination hearing before an immigration judge ("IJ"). *See* 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d). Generally, IJs have broad discretion in deciding whether to release someone on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006).

These same regulations, however, limit an IJ's discretion in some circumstances. The immigration judge does not have authority to redetermine ICE's decision to detain Doğukan under 1226(a) because he is now charged as removable under Section 1227(a)(4). 8 C.F.R. § 1003.19(h)(2)(i)(C). Although Doğukan cannot challenge ICE's custody determination specifically, he can request that an IJ determine whether he is properly within the category of individuals who are not entitled to IJ redetermination of the bond decision made by DHS. 8 C.F.R. § 1003.19(h)(2)(ii); *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring); *Matter of Joseph*, 22 I&N Dec. 799, 800 (BIA 1999). Doğukan is scheduled for what is referred to as a *Joseph* hearing on Friday, April 11, 2025 at 8:30 a.m.

At the hearing, Doğukan can submit evidence and legal authority as to whether he is properly included within the removability charge to allow the IJ to redetermine custody. *Hussain*, 492 F. Supp. 2d at 1033. The standard of review for the immigration judge is whether ICE is "substantially unlikely to prevail" on its charges; if they are, he cannot be detained. *Matter of Joseph*, 22 I &N Dec. 799 (BIA 1999). If Doğukan disagrees with the IJ's determination, he can seek review before the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1003.19(f). Thus, where an individual remains detained, he has either forgone a *Joseph* hearing, or the IJ (or the BIA) has found "at least some merit to the [Government's] charge [of removability]." *Demore*, 538 U.S. at 514, 531–32 (Kennedy, J., concurring).

II. Doğukan is not entitled to habeas relief from this Court because he is receiving due process in immigration court.

Doğukan's habeas petition should be denied because he is receiving all the process due to him in immigration court. Judge Davis recently issued a comprehensive decision

denying a habeas petition filed by an individual who had been charged as removable under 1227(a)(4) and subject to detention under 1226(a) and 8 C.F.R. § 1003.19(h)(2)(i)(C). Judge Davis sua sponte dismissed the petition on the clear statutory and regulatory scheme set out above. Order, *Ernesto Ruben Barajas Farias* v. *Garland, et al.*, No. 24-cv04366 (MJD/LIB) (Dec. 6, 2024) (ECF No. 18, hereinafter Order Denying Petition).

Upon the filing of the petition in *Barajas Farias*, Judge Davis issued an order to the Petitioner to show cause why the petition should not be summarily dismissed. In that Order, Judge Davis explained the statutory structure of immigration detention as set out in Section 1226 and the accompanying DOJ regulations. Order to Show Cause, 24-cv-4366 (MJD/LIB) (Dec. 4, 2024) (ECF No. 14, hereinafter "Order to Show Cause"). Judge Davis rejected petitioner's primary argument that the Attorney General improperly had expanded the category of individuals subject to mandatory beyond that set out by Congress in section 1226(c). *Barajas Farias*, Order to Show Cause at 2.

Rather, Judge Davis explained, Congress's scheme in 1226 clearly identified some individuals who in its determination were subject to mandatory detention (1226(c)) and gave discretion to the Attorney General under 1226(a) to make detention decisions for the remaining individuals in removal proceedings. Judge Davis wrote:

> In exercising that discretion, the Attorney General has decided that some detainees . . . will not be released on bond, while other detainees will be given a more granular determination. This appears entirely consistent with the delegation of authority to the Attorney General effected by 1226(a).

Order to Show Cause at 3. Judge Davis recognized that this statutory structure was similar to one Congress set up for the Bureau of Prisons that the Supreme Court upheld in *Lopez v. Davis*, 531 U.S. 230 (2001). Order to Show Cause at 3-4. There, the Supreme Court

upheld a BOP regulation categorically denying a sentence reduction provision to a category of inmates, as an exercise of discretion given to it by Congress. Order to Show Cause at 4 (citing *Lopez*, 531 U.S. at 233, 244).

In his Order Denying the Petition, Judge Davis carefully considered and rejected several arguments made by the petitioner. Judge Davis's reasoning focused on the text of section 1226, "which expressly commits" detention authority to the Attorney General's discretion. Order Denying Petition at 4. The Attorney General's further delegation, via regulation, to immigration judges is constrained by the Attorney General's finding that for individuals charged under section 1227(a)(4), no IJ review is allowed. *Id.* at 5. Judge Davis points out the Attorney General's interest in ensuring that IJs treat similar detainees similarly when promulgating the scheme in 8 C.F.R. § 1003.19. *Id.* at 8. Judge Davis rejected an argument that *Lopez* was not applicable because this detention is in the civil context. *Id.* at 6-7.

Finally, Judge Davis highlighted the Eighth Circuit's very recent precedent in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025). The *Banyee* decision rejects a constitutional challenge to mandatory detention under 1226(c) for the length of an individual's removal proceedings. 115 F. 4th at 931 ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'") (citing *Demore*, 538 U.S. at 523). *Banyee* and *Farass Ali* (*see* ECF 10 at 16-17) make clear that the Eighth Circuit reads section 1226 to allow for constitutional detention during removal proceedings, and this Court's review of the detention is constrained. Judge Davis

distinguished and disagreed with out-of-district authority to the contrary. *Id.* at 7.[1] This Court should adopt his reasoning and find that Doğukan's detention is constitutional. His habeas should be denied.

Dated: April 9, 2025

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[1] While the petitioner in *Barajas Farias* was charged in his removal proceedings under a different subsection of 8 U.S.C. § 1227(a)(4) than Doğukan, that distinction is irrelevant for the purposes of his habeas provision. All of those individuals charged under 1227(a)(4) are subject to the Attorney General's mandatory detention in 1003.19(h)(2)(i)(C).