UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DOĞUKAN GÜNAYDIN,

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 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; and MARCO RUBIO, in his official capacity as Secretary of State,

Respondents.

Case No. 0:25-cv-01151-JMB-DLM

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner Doğukan Günaydın (hereinafter, "Petitioner" or "Mr. Günaydın") has been and continues to be unlawfully detained. Now, he has been ordered released on bond and his immigration proceedings have been terminated, but he remains in custody. Mr. Günaydın respectfully requests that this Court convert the Temporary Restraining Order ("TRO") into a preliminary injunction, and grant him the following relief during the pendency of this litigation: (1) order his immediate release from immigration custody, and

(2) in the alternative, order that he not be transferred outside this District.[1]

As an initial matter, Respondents make no argument in opposition to Mr. Günaydın's request or the Court's order that they "not remove, transfer, or otherwise facilitate the removal of Günaydın from the District of Minnesota." ECF No. 28 at 10; *see* ECF No. 30. The Court should thus deem any arguments waived and convert the TRO into a preliminary injunction on Respondents transferring Mr. Günaydın out of the District of Minnesota during the pendency of the habeas proceedings. Because Respondents made no argument related to this issue, Mr. Günaydın will not belabor the point, and this reply will focus on Mr. Günaydın's unconstitutional detention.

II. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Günaydın seeks leave of the Court to incorporate by reference the extensive factual and procedural background set forth in the amended petition and TRO. *See* ECF No. 18 at ¶¶ 17-59, 70-80, 85-92; ECF No. 25 at 3-4.

Since filing the TRO, Immigration Judge Sarah B. Mazzie ("IJ Mazzie") issued an order terminating Mr. Günaydın's removal proceedings, following briefing by the Department of Homeland Security ("DHS") and Mr. Günaydın. *See* ECF No. 29-5 (IJ Mazzie's Order); 29-1 (DHS briefing); 29-3 (Mr. Günaydın's briefing). IJ Mazzie held that "DHS has not established removability under INA § 237(a)(4)(A)(ii) by clear and convincing evidence" and ordered that the charge of removability is not sustained. ECF

[1] Mr. Günaydın previously sought the Court's reinstatement of his SEVIS student status. Mr. Günaydın withdraws this request without prejudice for purposes of this TRO.

No. 29-5 at 5. Because no charges remain against Mr. Günaydın, immigration proceedings are terminated and he has no future hearings.

DHS immediately appealed IJ Mazzie's order terminating proceedings, staying her decision pursuant to 8 C.F.R. § 1003.6(a). ECF No. 29-6. Mr. Günaydın therefore remains detained despite having been granted bond and having his proceedings terminated. He has no further hearings before the immigration court.

III. ARGUMENT

A. Mr. Günaydın is likely to succeed on the merits.

1. Mr. Günaydın's arrest and detention are in violation of Due Process.

a. The automatic stay provision keeping Mr. Günaydın detained is unconstitutional.

Respondents argue that Mr. Günaydın has been afforded "ample" due process by the immigration court, noting Mr. Günaydın's wins in immigration court and his current detention pursuant to 8 C.F.R. § 1003.19(i). ECF No. 30 at 7. Proceedings have been terminated and the sole ground of Mr. Günaydın's detention is now an automatic stay of IJ Mazzie's order releasing him on bond pursuant to 8 C.F.R. § 1003.19(i) (hereinafter, the "automatic stay"), which is itself unconstitutional.[2]

[2] Respondent acknowledges that he has not previously made arguments alleging his detention under 8 C.F.R. § 1003.19(i) is unconstitutional. Respondents' justification for Mr. Günaydın's detention has shifted on a weekly basis as immigration court proceedings have played out. At the time of filing the amended petition, IJ Mazzie had not ruled on Mr. Günaydın's bond request, and thus the automatic stay was not in place. ECF Nos. 18, 22-1, 22-2. At the time of the filing of the TRO, IJ Mazzie had not terminated proceedings, and Mr. Günaydın was unsure whether DHS would appeal such an order. ECF Nos. 24, 25, 29-5. Now, immigration proceedings have been terminated and appealed, bond was granted and appealed, and the sole basis for Mr. Günaydın's detention is 8 C.F.R. §

Respondents argue these procedures are constitutional and without issue, explaining "[t]he fact that ICE has invoked the automatic stay provision to keep Günaydın during his bond appeal does not change the constitutionality of the detention." ECF No. 30 at 16. Mr. Günaydın contends it does. In whole, 8 C.F.R. § 1003.19(i) is unconstitutional and as applied to Mr. Günaydın, it has functioned to violate his due process rights. Respondents' reliance on *Ernesto Ruben Barajas Farias* v. *Garland, et al.*, No. 24-cv04366 (MJD/LIB) (Dec. 6, 2024) is misguided here. That case relates to mandatory regulatory detention, and not a challenge to the automatic stay.

With IJ Mazzie's recent order terminating proceedings, the entire posture of Mr. Günaydın's detention has shifted; he is no longer detained pursuant to the Attorney General's discretion. Through IJ Mazzie,[3] the Attorney General exercised its discretion, both ordering Mr. Günaydın released on bond and terminating his proceedings. He has no future immigration court hearings as of the time of filing. Now, DHS is the sole agency keeping Mr. Günaydın detained—despite orders to the contrary.

The automatic stay permits DHS to unconstitutionally unilaterally determine custody. The process of going before the Immigration Judge to seek bond is, in effect, a farce. It allows for the appearance of due process and the opportunity to be heard before the Immigration Judge, but in reality, it does not matter what the outcome of any hearings

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1003.19(i) and the related regulations in § 1003.6. As such, Mr. Günaydın intends to promptly file a second amended petition for writ of habeas corpus further addressing the unconstitutional detention he faces under 8 C.F.R. § 1003.19(i).

[3] *See* 8 C.F.R. § 1003.19(d).

before the IJ may be. DHS can invoke the automatic stay in order to keep a noncitizen detained, despite an order to the contrary, and without any showing of probability of success on the merits.

Respondents state the automatic stay lapses 90 days after filing the notice of appeal, and thus is not indefinite or in violation of due process. However, the same regulation provides DHS with the ability to seek a further discretionary stay. *See* 8 C.F.R. §§ 1003.19(i)(1); 1003.6(c)(5). This regulation allows for DHS to file a motion for discretionary stay, provides the Board of Immigration Appeals ("BIA") with 30 more days to decide on the motion for discretionary stay, and does not proscribe a time limit for the length of the discretionary stay, should it be granted. 8 C.F.R. § 1003.6(c)(5).

Further, even if the BIA upheld IJ Mazzie's order, granted Mr. Günaydın bond, and ordered him released, he would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no proscribed time limit for this stay or these decisions.

The court in *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D. N.J. 2003) found a prior version of the automatic stay unconstitutional.[4] The court reasoned, "[i]n effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture." *Id.* at 668. The court elaborated that the purpose of the automatic stay is to mitigate flight risk and danger to the community, and where an immigration judge had already addressed those concerns and the government offered no further reason to believe the petitioner would be a flight risk or danger to the community, the detention was unconstitutional. *Id.* at 669. Particularly instructive, the court explained,

> the risk of the erroneous deprivation of liberty is substantial as the application of the automatic stay provision here was the result of a unilateral determination made by a [DHS official] which overruled the bail decision made by an Immigration Judge. Unlike the typical requests for a stay which require a demonstration of the "likelihood of success on the merits," the automatic stay provision demands no such showing; in fact, as previously discussed, it was enacted precisely to avoid the need for such an individualized determination. Aliens like Petitioner can consequently remain in detention no matter how frivolous the appeal by the Government. Moreover, the procedural safeguards that exist within the Immigration Judge's hearing reduce the risk of that erroneous liberty deprivation.

Id. at 671-72. Here, as in *Ashley*, a DHS official has made the unilateral decision to overrule the Immigration Judge and keep Mr. Günaydın detained, despite being ordered released on bond.

Considering the manner in which DHS has acted thus far in keeping Mr. Günaydın

[4] The prior version of the 8 C.F.R. § 1003.19(i) regulation did not proscribe a 90-day limit for the automatic stay. However, the court's reasoning in *Ashley v. Ridge* is still on point and persuasive, as the regulations as written today allow for essentially indefinite detention via DHS' filing motions for discretionary stays and/or referrals to the Attorney General.

detained (arresting him without cause, changing the charges, delaying his proceedings, and invoking the automatic stay within an hour of receiving IJ Mazzie's order granting bond), Mr. Günaydın has every reason to expect that DHS will continue to act in this manner and seek further discretionary stays. Indeed, all DHS has to do is request a discretionary stay for Mr. Günaydın to continue to be detained. 8 C.F.R. § 1003.6(d). Even if the BIA denies such a motion, a separate automatic stay will be invoked and DHS is given more time to present the case to the AG and file yet another discretionary stay request. *Id.* There is no end in sight to Mr. Günaydın's detention, despite his continued wins in immigration court. Mr. Günaydın is therefore likely to show that he is unconstitutionally detained pursuant to the automatic stay and succeed on the merits of his habeas petition.

b. Respondents arrested and detained Mr. Günaydın without a legitimate basis, in violation of due process.

Respondents urge the Court to focus solely on Mr. Günaydın's current detention, conveniently glossing over the lack of due process he received in the arrest and initial detention. Apparently Respondents' position is that once they have finally worked out the justification for Mr. Günaydın's detention, the unlawful steps that led to the current detention should be forgotten. As has been explained in the amended petition and TRO, there was no legal or factual basis for Mr. Günaydın's arrest on March 27, and DHS did not settle on what charge it could pursue against him until April 7; it did not confirm the charges against him until April 22.

Respondents argue that Mr. Günaydın cannot show any prejudice resulting from the multiple amendments to the charging documents. ECF No. 30 at 6. The clear prejudice

suffered by Mr. Günaydın is the time he spent in detention without knowing the charges against him. The charge that was lodged against him at the time of his arrest, and the subsequent charge, have been withdrawn. Therefore, he was in custody from March 27 to April 7 on dropped charges. This initial detention he faced while DHS tried to figure out what it actually wanted to charge him with, is prejudicial. *See* ECF No. 18 at ¶¶ 22-31. If DHS did not know until April 7 that he was deportable only under INA § 237(a)(4)(A)(ii), it should, not have arrested him on March 27. Respondents offer no explanation for having lodged unsupportable charges, and only assert that Mr. Günaydın did not suffer prejudice as a result.

Mr. Günaydın was not arrested for a legitimate purpose and continues to be held without a legitimate purpose. Respondents arrested Mr. Günaydın without knowing what immigration laws he violated, and continued to hold him—despite him being granted bond—while they figured out what they could try to charge him with. At minimum there must be a legitimate basis for detention, prior to the arrest. He therefore continues to be detained in violation of the Fifth Amendment and immigration laws of the United States.

c. Respondents continue holding Mr. Günaydın in detention for punitive and deterrent purposes.

Respondents make no argument in opposition to Mr. Günaydın's claim that he is being detained for punishment or deterrent reasons. ECF No. 30. Therefore, Mr. Günaydın will briefly reiterate here that Respondents are detaining Mr. Günaydın to compel other students with lawful status to self-deport out of fear for a similar fate (detention). Based on public reports, DHS advised hundreds, if not thousands, of students in the last several

weeks that they have lost their student status because their F-1 visas have been revoked and/or their visa records have been terminated.[5] Thus, Respondents' arrest and detention of international students such as Mr. Günaydın has the intent and effect of forcing students who are advised of revocations/termination (who may not have access to representation)—and who fear the same arrest and detention forced on noncitizens like Mr. Günaydın—to abandon their lawful status and "self-deport" without protesting or mounting legal challenges to their unlawful SEVIS terminations.[6]

Respondents' evolving justifications for Mr. Günaydın's arrest and detention further affirm his contention that Respondents are aware there is no legitimate basis for his current custody, despite an Immigration Judge ordering him released on bond. Simply: the record is clear that DHS did not know prior to his arrest what exactly makes him removable, but detained him anyway to so that other students would choose to self-deport rather than face the same fate. Again, the legitimate bases for immigration detention are to mitigate dangerousness and risk of flight. *See El-Dessouki v. Cangemi*, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006) ("a finite period of detention to allow the BIA an opportunity to review the immigration judge's bond redetermination is a narrowly tailored procedure that serves the government's interest in preventing flight of aliens likely to be ordered

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[5] Ashley Mowreader, *International Student Visas Revoked*, INSIDE HIGHER ED, https://www.insidehighered.com/news/global/international-students-us/2025/04/07/where-students-have-had-their-visas-revoked (last visited Apr. 25, 2025).

[6] On March 14, 2025, Respondent Kristi Noem issued a post on X: "I'm glad to see one of the Columbia University terrorist sympathizers use the CBP Home app to self deport." Kristi Noem (@KristiNoem), X (Mar. 14, 2025, 11:01 AM), https://x.com/Sec_Noem/status/1900562928849326488.

removable and in protecting the community" (emphasis added)). IJ Mazzie has held that Mr. Günaydın is neither a flight risk nor a danger to the community (ECF No. 22-1), and ordered immigration proceedings terminated altogether (ECF No. 29-5). For the aforementioned reasons, it is likely that Mr. Günaydın will succeed on the merits of amended petition.

2. Mr. Günaydın has been and continues to be prejudiced by the government's violating his due process rights.

Respondents state that Mr. Günaydın has faced no prejudice, but fail to acknowledge that unlawful detention is prejudicial. As explained above, DHS is not required to make any showing of success on the merits or possibility of winning its appeal; rather, it can simply file a notice that allows it to circumvent the Immigration Judge's order. The construction of the regulations allowing for this also allow for DHS to continue to file requests that result in Mr. Günaydın's detention, even if such a request is denied. Section III.A.1.a., *supra*. At this point, he is not awaiting a determination on any of his removal proceedings. The Immigration Judge has made clear, reasoned rulings that he should be released and terminating his proceedings, yet he remains in custody. ECF No. 22-1, 29-5. Respondents' assertion that Mr. Günaydın has not been prejudiced, without further explanation or argument, is simply not sufficient.

Additionally, Mr. Günaydın was given no notice of any immigration enforcement against him, and therefore had no opportunity to take any action to prevent his arrest before he was taken into custody. Respondents revoked Mr. Günaydın's nonimmigrant visa through a "silent" revocation (ECF No. 11-3), and terminated his SEVIS record hours after

they arrested him (ECF No. 1-1). The terminated SEVIS record does not make any indication of a criminal basis for the termination. *See* ECF No. 1-1; ECF No. 18 at ¶¶ 71-76. The warrant for his arrest indicates that the probable cause for his arrest is based on the NTA. ECF No. 11-4. The NTA states that removal proceedings were initiated because he failed to maintain or comply with the conditions of his nonimmigrant status (notably, not based on any criminal activity). ECF No. 11-5. There was no opportunity for him to determine that he may wish to exit the United States and avoid this indefinite detention that DHS has forced upon him.

This lack of notice, and changing justifications for Mr. Günaydın's arrest, constitute actual prejudice, and show Mr. Günaydın is likely to succeed on the merits of his habeas petition.

B. Mr. Günaydın will continue to face irreparable harm if emergency relief is not granted.

Unjustified detention constitutes irreparable harm. *See Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing "[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual" (cleaned up) (internal quotation marks omitted) (citation omitted)). It is well established that deprivation of constitutional rights constitutes "irreparable injury". *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977).

Mr. Günaydın has established that his due process rights are being violated because DHS continues to detain him despite the underlying basis for his detention being unlawful,

and now, pursuant to an unconstitutional regulation, 8 C.F.R. § 1003.19(i)(2). *See, supra*, section III.A.1. Indeed, Mr. Günaydın has already been irreparably harmed by the loss of his liberty in having spent the last six weeks in immigration detention.

Next, the basis for Mr. Günaydın's detention has already changed many times since his arrest on March 27. It is imperative that the Court act now, on an emergency basis, as the basis for his detention will likely change again if he is still detained when the automatic stay lapses. *See Altayar v. Lynch*, 2016 WL 7383340, at *3 (D. Ariz. Nov. 23, 2016) (denying habeas claims as to automatic stay provision as moot when BIA issued discretionary stay). Mr. Günaydın will otherwise be forced to follow an ever-changing target in seeking his release from custody.

Finally, Respondents articulate no harm they would face if emergency relief is granted. *See* ECF No. 30. They state only that Mr. Günaydın's unlawful detention is insufficient to show harm, and that he essentially caused this to happen to himself, contending that "removal and detention are normal consequences of the situation in which he placed himself through his underlying criminal conduct." *Id.* at 18-19. This statement is misleading: Mr. Günaydın's criminal conduct alone does not subject him to removal and detention. Instead, DHS has lodged an infrequently-charged immigration violation alleging that he engaged in criminal activity that endangered public safety. ECF No. 16-1. Congress clearly and specifically enumerated the crimes that subject a noncitizen to deportability and mandatory detention. *See* U.S.C. §§ 1226(c), 1226a, 1227(a)(2). Driving while impaired is not one of those crimes. Indeed, the BIA has only one published decision

analyzing INA § 237(a)(4)(A)(ii) and in that decision noted,

> Our interpretation [of INA § 237(a)(4)(A)(ii)] is consistent with the legislative history accompanying the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, which revised the grounds of deportation in former section 241(a) of the Act, 8 U.S.C. § 1251(a) (1988), including the grounds currently at section 237(a)(4). *See* H.R. Rep. No. 100-882 at 44 (1988) (stating that "**society is adequately protected from criminals under the moral turpitude and drug grounds for deportation**, and . . . it is not necessary to make aliens who commit minor criminal offenses . . . deportable.").

Matter of Tavarez Peralta, 26 I&N Dec. 171, 174, n.5 (BIA 2013) (emphasis added). Just as Mr. Günaydın was not on notice that his visa had been revoked, nor that his student status had been terminated, he was also not on notice that his conviction for driving while impaired subjected him to mandatory detention or removal. IJ Mazzie agreed this charge is not sustainable and terminated his proceedings. As explained, Mr. Günaydın's continued unjustified detention constitutes irreparable and immediate harm.

C. The issuance of a TRO is in the public interest.

Respondents argue only that denying Mr. Günaydın's TRO is in the public interest because granting it would undermine DHS's authority to enforce the INA. ECF No. 30 at 19-20. As this Court noted, "[p]reserving Günaydın's access to judicial review and preventing unlawful detention are compelling issues of public importance." ECF No. 28 at 9-10. Mr. Günaydın requests that the Court adopt this position and grant an extension of the TRO and convert the order into a preliminary injunction effective for the pendency of this litigation.

D. Mr. Günaydın should not be required to post a bond.

Under the circumstances of this case, Mr. Günaydın respectfully asks this Court to

find that posting a bond pursuant to Fed. R. Civ. P. 65(c) is unnecessary, since an order requiring Respondents to refrain from arresting, detaining, or transferring Mr. Günaydın could not result in any conceivable financial damages to Respondents. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

IV. CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to extend his Temporary Restraining Order and convert the order into a Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Mr. Günaydın's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.
2. Enjoin Respondents from continuing to detain Petitioner in their custody during the pendency of his amended petition for writ of habeas corpus before this Court.
3. If Petitioner is not immediately released from Respondents' custody, enjoin Respondents from transferring Petitioner to a detention facility out of this District where he would lose access to his counsel and support network.
4. Grant Petitioner such other relief as the Court deems appropriate and just.

[signature block to follow]

Respectfully submitted,

Dated: May 8, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that the above memorandum complies with the limits in Local Rule 7.1(f) and with the type-size limit of Local Rule 7.1(h). This memorandum contains 3,740 words, not including the caption designation required by Local Rule 5.2, the signature-block text, or the certificates of compliance. The total word count between the motion and this reply is therefore 11,844. This memorandum uses a proportionally spaced font. Microsoft Word for Microsoft 365's word-processing software was used to count words and the function was applied specifically to include all text, including headings footnotes, and quotations. This memorandum, including footnotes, are all set in size 13 double-spaced font.

/s/ Hannah Brown
Hannah Brown