

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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| Juan Francisco Mendez, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Case No. 1:25-cv-00147-JL-AJ |
| |) | |
| Superintendent Christopher Brackett, Warden, |) | |
| Strafford County Department of Corrections, |) | |
| Patricia H. Hyde, Acting Director of Boston |) | |
| Field Office, U.S. Immigration and Customs |) | |
| Enforcement, Enforcement Removal Operations; |) | |
| Kristi Noem, Secretary of the U.S. Department of |) | |
| Homeland Security; and Pamela Bondi, Attorney |) | |
| General of the United States, in their official |) | |
| Capacities, |) | |
| |) | |
| Respondents. |) | |
| |) | |

FEDERAL RESPONDENTS' RESPONSE TO
PETITIONER'S EMERGENCY MOTION FOR IMMEDIATE RELEASE (ECF No. 5)

Federal Respondents, Patricia H. Hyde, Acting Director of Boston Field Office, U.S. Immigration and Customs Enforcement (“ICE”), Enforcement Removal Operations (“ERO”); Kristi Noem, Secretary of the Department of Homeland Security (“DHS”), and Pamela Bondi, Attorney General, hereby respond to the Court’s May 8 docket order directing them to answer Petitioner Juan Francisco Mendez’s Emergency Motion for Immediate Release, ECF No. 5. Federal Respondents object to the motion and ask that the Court deny it on three grounds: first, ICE never lost its authority to detain Petitioner pending his removal proceedings because, contrary to Petitioner’s representation, his removal proceedings were not dismissed; second, Petitioner’s motion is moot, because Petitioner has been issued a new Notice to Appear; and

third, Petitioner's motion is unnecessary, because he can address his continued detention by requesting a bond hearing.

I. Pertinent Law

The Immigration and Nationality Act ("INA") provides that in a removal proceeding, "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability" of a non-citizen. 8 U.S.C. § 1229a(a)(1). It further provides that removal proceedings commence on service to the non-citizen of a Notice to Appear ("NTA"), or written notice of such proceedings. 8 U.S.C. § 1229 (a)(1) (titled "Initiation of removal proceedings").

ICE's authority to detain non-citizens pending removal proceedings arises under 8 U.S.C. § 1226, which provides that a non-citizen "may be arrested and detained pending a decision on whether the [non-citizen] is to be removed from the United States," and that "pending such decision, the Attorney General . . . may continue to detain the arrested [non-citizen]." 8 U.S.C. § 1226(a).¹

Thus, because an NTA initiates removal proceedings, which decide whether a non-citizen is to be removed from the United States, service of an NTA provides ICE ERO the authority to detain a non-citizen.

II. Application of Law to Petitioner

Federal Respondents agree that on May 8, 2025, Petitioner appeared before an Immigration Judge ("IJ"), who terminated the hearing for ICE ERO's failure to prosecute. Pet.'s Mot. at 1 (ECF No. 5). As Petitioner notes, ICE did not file Petitioner's NTA with the

¹ Although the INA refers to the Attorney General, the Attorney General's functions were transferred to Secretary of DHS in the Homeland Security Act of 2002.

immigration court before Petitioner's May 8 hearing.² *Id.* However, Federal Respondents disagree with Petitioner's claim that "[t]here is presently no pending immigration case or charge against" him, and that therefore he must be dismissed. *Id.*

A. Termination of the IJ hearing did not result in a decision on whether Petitioner is to be removed from the United States.

First, ICE's failure to file the NTA with the immigration court does not dismiss or nullify the NTA with which Petitioner had previously been served and does not result in a decision whether Petitioner is to be removed from the United States. Thus, it does not disturb ICE's authority to continue to detain him pending resolution of this question. The IJ could not dismiss the removal proceedings when it possessed no charging instrument, because there was nothing to dismiss; claiming that termination of the May 8 proceeding dismissed the removal proceedings would be analogous to a judge claiming authority to dismiss a criminal case before a complaint or indictment had been filed. Although the hearing itself was terminated, Petitioner remains pending removal proceedings, as identified in the NTA with which he was served. Thus, he may continue to be detained.

B. Petitioner's motion is moot because ICE has served him with a superseding NTA and filed this NTA with the immigration court.

Second, to the extent the Court disagrees that ICE never lost detention authority over Petitioner, ICE has remedied its earlier failure to prosecute by serving Petitioner with a new NTA and filing that NTA with the immigration court. A copy of that document is attached to this pleading as Exhibit 1.³ Therefore, Petitioner's motion is moot, because he is pending

² Filing an NTA with the requires uploading it to the EOIC Case and Appeals System ("ECAS"), which may be accessed at <https://www.justice.gov/eoir/ECAS>.

³ Although ICE could have remedied its failure to prosecute by the original NTA with the

removal proceedings pursuant to a properly served NTA and ICE may detain him during that time. 8 U.S.C. § 1226(a).

C. Petitioner's motion is unnecessary because he can address his request for release through a bond hearing.

Finally, Petitioner may seek release by requesting a bond hearing, which he has not yet done. Under 8 U.S.C. § 1226(a), non-citizens who do not have certain disqualifying criminal history outlined at 8 U.S.C. § 1226(c), “may,” in the discretion of the officer authorized to issue a warrant of arrest, be released on conditions, if the non-citizen can “demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and . . . [the non-citizen] is likely to appear for any future proceeding.” 8 C.F.R. §1236.1(c)(8). Any such non-citizen who disagrees with the immigration officer’s decision about release may have that decision reviewed by an immigration judge in a bond hearing. 8 C.F.R. §1003.19(a), 8 CFR 1236.1(d)(1). And if the non-citizen disagrees with the immigration judge’s review, they may appeal that decision to the Board of Immigration Appeals (“BIA”). 8 CFR 1236.1(d)(3)(i).

Presumably, the officer involved in arresting Petitioner believed that release was inappropriate, which means that Petitioner may request a bond hearing where the IJ will review the arresting officer’s decision to detain him, following the procedures identified at 8 C.F.R. §1003.19(a). Nothing has precluded him from requesting such a bond hearing at any time since he was taken into custody.

immigration court, the NTA must include “the time and place at which the proceedings will be held.” 8 U.S.C. § 1229(a)(1)(G)(i). The original NTA included the date and time of the May 8 hearing that was terminated. To ensure no irregularity in the NTA, ICE chose to issue a new one. The new NTA documents Petitioner’s refusal to sign, which is his right, but does not invalidate the document.

III. Conclusion.

For the above reasons, Federal Respondents ask that Petitioner's motion be denied.

Respectfully submitted,

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