United States District Court
Western District of Texas
San Antonio Division

Jose Luis Alvarez Martinez,
Petitioner,

v.

Kristi Noem, Secretary of United States Department of Homeland Security et. al.,
Respondents.

No. 5:25-cv-01007-JKP-ESC

**Federal Respondents' Supplemental Response in Opposition to Petitioner's Motion for Temporary Restraining Order and/or Preliminary Injunctive Relief**

In response to this Court's order for supplemental briefing, *see* ECF No. 12, Federal Respondents submit the following:

1. The district court's decision in *Ashley v. Ridge*, 288 F.Supp.2d 662 (D.N.J. 2003), is distinguishable, and this Court should not rely on it to grant this TRO motion.

a. First, there was no dispute in *Ashley* that the statute governing detention was 8 U.S.C. § 1226(a). Here, however, the parties dispute which statute applies to govern Petitioner's detention: Federal Respondents aver that the appropriate statute governing detention is 8 U.S.C. § 1225(b), which mandates his detention without a bond hearing, because he is an applicant for admission who was intercepted on the threshold of entry. Petitioner, however, claims the proper statute governing his detention is § 1226(a), because even though he was intercepted at the border, he was subsequently released and permitted to live in the interior during the course of his removal proceedings.

b. The *Ashley* court did not address the mandatory detention provisions within § 1225(b), but it did address a different mandatory detention statute, 8 U.S.C. § 1226(c). In so doing, the court examined the Supreme Court decision in *Demore v. Kim*, noting that

Kim was held under § 1226(c), not § 1226(a), and noting that Kim was being held in custody until he could receive an individualized bond hearing, whereas Ashley was being held after already being afforded that opportunity and receiving a bond. *See Ashley*, 288 F.Supp. at 673. The *Ashley* court speculated that the *Kim* court would not have reached the same conclusion if Kim were being held on an automatic stay after having been granted a bond by an immigration judge. *Id.* This speculation defies logic, however, and has been proven untrue in subsequent Supreme Court case law, which found that continued mandatory detention under both § 1225(c) and § 1226(b) comports with the limited due process rights that Congress afforded to aliens subject to those statutes. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281 at 300–01 (2018). In other words, under *Jennings*, Kim would not have been given a bond hearing in any event without showing an as-applied constitutional challenge, because § 1226(c) comports with due process, despite providing no such bond hearing. *Id.*

c. Similarly, here, ICE takes the position that Petitioner Alvarez is currently held under § 1225(b) without any right to a bond hearing. In other words, staying a court order that would otherwise release him on bond, to which he is not entitled by statute in the first place, does not violate notions of due process. For this Court to have review authority over this claim, Petitioner Alvarez must show that this mandatory detention status, as applied to him in this context, is unconstitutional. He cannot make that showing. *Ashley*, 288 F.Supp. at 672.

d. Even more importantly, Ashley was a lawful permanent resident (LPR) of the United States who was being charged with removability, not inadmissibility. LPRs detained under § 1226(a) have more due process rights than aliens who have never been

admitted to this country. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281 at 300–01 (2018). Petitioner Alvarez has never been lawfully admitted to this country and is charged with inadmissibility on the NTA as being present in the United States without ever having been inspected or paroled. In other words, he is considered "on the threshold of entry." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

e. An alien who tries to enter the United States illegally is treated as an "applicant for admission," and an alien who is detained shortly after unlawful entry cannot be said to have "effected an entry." *Id.* The Supreme Court rejected arguments that because an alien had successfully made it 25 yards into the country before being apprehended, he should receive more process. *Id.* at 139. Even if such an alien is permitted to live within the interior "for years pending removal," the analysis does not change; alien is still "treated" for due process purposes "as if stopped at the border." *Id.* (collecting cases). In other words, an alien intercepted upon entry to the United States without inspection, regardless of whether he is held in detention or released in the exercise of discretion for the duration of removal proceedings, has only the rights Congress provided by statute. *Id.* at 140. Congress did not afford bond hearings to aliens detained under § 1225(b). *Jennings*, 583 U.S. at 301. As such, mandatory detention under this provision without access to a bond hearing does not violate due process. *Id.*

f. Finally, the current version of the pertinent regulation contains more safeguards than the version the *Ashley* court reviewed back in 2003. *See* 8 C.F.R. § 1003.6(c). The automatic stay is no longer indefinite or otherwise deemed "indeterminate." *Id.*

2. The two subsections of the stay provision provide different relief and different procedural safeguards. The *Ashley* court even stayed its own order to allow ICE to apply for the

discretionary stay under section 1 before lifting the auto-stay, finding that the discretionary stay was more narrowly tailored and less restrictive than the auto-stay.

3. A challenge to discretionary custody decisions is protected from judicial review. *See El Gamal v. Noem*, --- F.Supp.3d ---, 2025 WL 1857593 at *3–4 (W.D. Tex. July 2, 2025) (collecting cases). As Judge Garcia noted in *El Gamal*, however, an as-applied challenge to a statute's mandatory detention provision can be lodged, even if the statute itself has been found constitutional on its face. *Id.* at *4. In other words, this Court lacks jurisdiction to review ICE's discretionary basis for requesting the auto-stay but may review whether the mandatory detention statute under § 1225(b) is unconstitutional, as applied to Mr. Alvarez.

a. As explained in the original TRO opposition, though, Mr. Alavarez is unlikely to show that his mandatory detention under § 1225(b) is unconstitutional. *See* ECF No. 11 at 4–6. His detention is neither prolonged, nor indefinite. He was given a bond hearing, explained the basis for ICE's position that he is subject to mandatory detention, provided noticed of the automatic stay and copy of ICE's notice of appeal, given an opportunity to file a brief in opposition to DHS's appeal (through counsel) and protected by the safeguards provided in the text of the regulations. *Id.* The bond appeal remains pending, and the automatic stay is subject to the procedural safeguards outlined in the regulations. In any event, his detention will end at the conclusion of his removal proceedings, so it is not indefinite.

4. If this Court finds that the automatic stay, as applied to Mr. Alvarez, violates his due process rights, despite ICE's position that he is an applicant for admission on the threshold of entry, then Federal Respondents request, in the alternative, a 30-day stay of the lifting of the automatic stay. *See Ashley*, 288 F.Supp.2d at 675. This temporary stay would allow ICE to seek a

discretionary stay under the first prong of the stay regulation, which courts have already found satisfy notions of due process. *Id.*

This TRO motion should be denied, and the Court should deny the Petition.

Respectfully submitted,

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