

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Jose Luis Alvarez Martinez,

Petitioner,

Kristi Noem, Secretary of Homeland
Security; Todd M. Lyons, Acting Director
of Immigration and Customs
Enforcement; Miguel Vergara San
Antonio Field Office Director; Rose
Thompson, Warden of Karnes County
Immigration Processing Center

Respondents.

Civil Case No. 5:25-cv-01007

PETITIONER'S SUPPLEMENTAL BRIEFING

The U.S. Department of Homeland Security's (DHS) use of the automatic stay provision at 8 C.F.R. § 1003.19(i)(2) violates the Petitioner's substantive and procedural due process rights and exceeds the Attorney General's discretionary authority under 8 U.S.C. § 1226(a), rendering the regulation ultra vires. As District Court of Maryland recently observed:

The Government's discretion in matters of immigration is deep and wide, but surely its chop does not overcome the banks of due process enshrined in the Constitution. Yet that is precisely what the Government attempts here. Invocation of the automatic stay per 8 C.F.R. § 1003.19(i)(2) renders the IJ's custody redetermination order an "empty gesture" absent demonstration of a compelling interest or special circumstance left unanswered by [the Immigration Judge].

Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, *32–33 (D. Md. Aug. 24, 2025). At least two other district courts have reached the same conclusion.¹ This

¹ See, e.g., *Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237 (D. Minn. May 21, 2025); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 U.S. Dist. LEXIS 117197 (D. Minn. June 17, 2025); *Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321 (D. Minn. Aug. 15, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 U.S. Dist. LEXIS 160314 (D. Neb. Aug. 19, 2025); *Jimenez v. Kramer*, No.

Court should also hold that the automatic stay provision violates the Fifth Amendment's Due Process Clause.

In its supplemental order the Court asked the parties to address four issues. *See* Order for Supp. Briefings, ECF No. 12. The Petitioner addresses these issues below in the same order the Court announced them:

1. **Whether *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D.N.J. 2003), is distinguishable and why the Court should not reach the same outcome in the instant case.**

The key reason the New Jersey District Court found the Petitioner's detention in *Ashley* unconstitutional—the absence of a “specialized justification” for continued detention—remains unaddressed in the autostay provision at issue in this case. Unlike the final rule, which provides that the automatic stay lapses after 90 days, the interim rule in *Ashley* provided that the stay remained in effect until the Board of Immigration Appeals (Board) resolved the appeal.² 288 F. Supp. 2d at 665 (citing Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909 (Oct. 31, 2001)). The 90-day lapsing provision in the final rule does not ameliorate the due process violations identified in *Ashley*. The final rule, like its predecessor, requires no individualized assessment for the continued detention and provides no process to challenge the autostay. Consequently, the final rule violates the Petitioner's right to due process protected by the Fifth Amendment.

In *Ashley*, the New Jersey District Court considered whether the petitioner's detention pursuant to the interim rule allowing an automatic stay whenever the district director determined

4:25CV3162, 2025 U.S. Dist. LEXIS 157245 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 U.S. Dist. LEXIS 157236 (D. Neb. Aug. 14, 2025).

² The regulations provided that the Service must file its appeal within ten business days of the IJ's order, and the Board was expected to rule within 90 days (single-judge panel) or 180 days (three-judge panel), with priority given to custody appeals involving detained noncitizens. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1075 (N.D. Cal. 2004) (citing 8 C.F.R. § 1003.1(e)(8)(i)).

that the noncitizen should not be released or had a bond of \$10,000 or more violated the Due Process Clause. *Id.* at 667. The interim emergency rule was designed to ensure removal by preventing flight and to protect the public from potential harm. *Ashley*, 288 F. Supp. 2d at 66. In practice, however, the “automatic stay regulation raised due process concerns” as it was routinely invoked “without careful calculation.” *Günaydin*, 2025 U.S. Dist. LEXIS 99237, at * 10–11. Although initially tied to anti-terrorism efforts, the provision was increasingly applied to non-violent offenders with old convictions. *Id.* at * 11. Consequently, several federal district courts ruled that detention pursuant to the automatic stay provision was unconstitutional. *See, e.g., Ashley*, 288 F. Supp. 2d at 673; *Almonte-Vargas v. Elwood*, No. 02-CV-26662002, U.S. Dist. LEXIS 12387 (E.D. Pa. June 28, 2002); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003); *Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 U.S. Dist. LEXIS 50670 (N.D. Cal. June 17, 2005); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003).

In 2006, DHS promulgated the final rule, which provided that the stay will lapse 90 days after the notice of appeal was filed, with extensions if DHS seeks a discretionary stay or refers the case to the Attorney General.³ *See Günaydin*, 2025 U.S. Dist. LEXIS 99237, at *12 (citing *Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006)). While this imposed a nominal limit, the regulation still authorizes prolonged custody without individualized consideration—the same constitutional defect identified in *Ashley*.⁴

³ The final rule also added a requirement that in order to maintain the stay the notice to appeal must include a “certification by a senior legal official” stating the official approves the filing and that the official is satisfied with the contentions justifying the continued detention. *See Günaydin*, 2025 U.S. Dist. LEXIS 99237, at *14.

⁴ The potential for prolonged custody under the final rule may exceed far more than 90 days as it allows DHS to seek a discretionary stay before the expiration of the 90 days. *See* 8 C.F.R. § 1003.6(c)(5). If the Board does not adjudicate the motion for a discretionary stay within the 90-day period, the stay will remain in effect for an additional 30 days to permit the Board to rule on the motion. *Id.* If the Board grants the noncitizens release, denies the motion for discretionary stay, or fails to adjudicate the motion before the automatic stay expires, the stay is automatically stayed

See Zabadi, 2005 U.S. Dist. LEXIS 50670, at *4 (“In this Court’s view, for example, the present regulation would be constitutional if detention at the behest of the prosecutor was limited to a period short enough, such as a week, perhaps more, to allow the prosecutor to seek emergency relief under 8 C.F.R. 1003.19(i)(1).”). Thus, as explained below, the automatic stay provision continues to raise the same substantive and procedural due process concerns identified in *Ashley*.

A. Petitioner’s detention pursuant to the current regulation violates his substantive due process right under the Fifth Amendment.

In *Ashley*, the court determined that the automatic stay provision violated the petitioner’s substantive due process rights because it “render[ed] the Immigration Judge’s bail determination an empty gesture.” *Ashley*, 288 F. Supp. 2d at 668. The court emphasized that the right to bail has “roots deep in our constitutional system,” and that any deprivation of this right must be narrowly tailored to serve a compelling state interest. *Id.* at 668. *Ashley* further found that the Government had not demonstrated any “special justification” that outweighed the petitioner’s constitutional liberties to justify continued detention without bail. *Id.* at 669.

Similarly, under the final rule, DHS remains authorized to unilaterally override the Immigration Judge’s (IJ) decision without providing any individualized justification. *See, e.g., Mohammed H.*, 2025 U.S. Dist. LEXIS 117197, at *14-15 (holding that the automatic stay effectively overruled the IJ’s bond determination, allowing the government to detain the petitioner without showing dangerousness or flight risk, without evidence, and without immediate judicial review, rendering detention arbitrary and unreviewable.); *Jacinto*, 2025 U.S. Dist. LEXIS 160314, at *11-12 (“Respondents have not attempted to show any ‘special justification’ or compelling governmental interest which would outweigh Petitioner’s constitutional liberty.”). As in *Ashley*,

for an additional five days to permit DHS to decide whether to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). If DHS decides to refer the case, then the stay would remain in place for an additional fifteen days to permit the Attorney General time to consider the merits of the referred decision.

the Respondents have not shown—and indeed are not required to show—any individualized reason why continued detention is necessary. In fact, the IJ has already determined that the Petitioner poses neither a danger to the community nor a significant risk of flight, and *Ashley's* reasoning therefore applies to the instant case.

B. Petitioner's detention pursuant to the current regulation also violates his procedural due process right under the Fifth Amendment.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citations omitted). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Id.* at 335.

In *Ashley*, the court determined that the three *Mathews* factors weighed in favor of the Petitioner. *Ashley*, 288 F. Supp. 2d at 670–71. First, the private interest at stake, freedom from confinement, was substantial, and the government had not identified any threat to the individual or the community that would justify continued detention without judicial review of the automatic stay. *Id.* at 670. Second, the risk of erroneous deprivation was significant because the automatic stay provision allowed a unilateral decision by the ICE district director to overrule the IJ's bail determination. *Id.* Unlike typical stay requests, which require a showing of likelihood of success on the merits, the automatic stay provisions require no individualized determination, as it was designed to avoid such review. *Id.* at 665 (“The stay ‘allows the Service to maintain the status quo while_ it seeks review by the Board [of Immigration Appeals], and thereby avoids the necessity for a case-by-case determination of whether a stay should be granted.’”) (citing 66 Fed. Reg. 54909)).

Third, the burden on vacating the stay was minimal because the IJ had already made a bail determination, and the government could seek an emergency discretionary stay under 8 C.F.R. § 1003.19(i)(1) showing likely success on appeal and irreparable harm. *Id.* at 671.

Under the final rule, these constitutional defects remain, as outlined in the Petitioner's motion for temporary restraining order. Petr's Mot. for TRO, ECF No. 6. Accordingly, the Court should follow *Ashley* and the other district courts, *supra* n.1, which have found that the automatic stay provision fails to meet the constitutional procedural requirements of the Fifth Amendment.

2. Whether the discretionary stay under 8 C.F.R. § 1003.19(i)(1) raises the same due process concerns as 8 C.F.R. § 1003.19(i)(1)(2).

Unlike the *automatic* stay at issue here, the discretionary stay requires an individualized determination by the government. *See Günaydin*, 2025 U.S. Dist. LEXIS 99237, at *24 (“The BIA then conducts an expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case.”); *see also Zavala*, 310 F. Supp. 2d at 1077 (“The emergency stay provision found in 8 C.F.R. § 1003.19(i)(1) presents an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest.”). DHS can ask for a discretionary stay and the noncitizen has an opportunity to respond. The Board then acts as a neutral arbiter in deciding the stay request. By stark contrast, the automatic stay provisions provide the noncitizen with no method to respond, and the Board is deprived of its function to act as a neutral decision-making agency. *See, e.g., Mohammed*, 2025 U.S. Dist. LEXIS 117197, at *16–17 (“[T]he automatic stay rendered Petitioner's continued detention arbitrary and gave him no chance to contest the Government's case for detention.”). Indeed, the automatic stay provisions elevate ICE to act as both prosecutor and judge.

3. Whether the Court has jurisdiction to consider the Petitioner's motion for a temporary restraining order and writ of habeas corpus.

In *Kambo v. Poppell*, Judge Xavier Rodriguez decided that neither 8 U.S.C. §§ 1252(g), 1252(a)(2)(B)(ii), 1252(b)(9), and 1226(e) deprive federal courts of jurisdiction over habeas petitions challenging unlawful immigration detention. No. SA-07-CV-800-XR, 2007 U.S. Dist. LEXIS 77857 (W.D. Tex. Oct. 18, 2007). The Court observed: “Though *Zadvydas*, *Demore*, and *Oyelude* all pre-date the effective date of REAL-ID, nothing in REAL-ID affects their holdings that federal district courts retain habeas jurisdiction over constitutional challenges to the statute that permits detention.” *Id.* at *31. This finding has proven true since no federal court has overturned *Kambo*'s finding of jurisdiction in over 15 years. This Court clearly has jurisdiction over this case as determined by the Supreme Court and numerous district courts. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018); *Leal-Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *13–20; *supra* n. 1.

Kambo furthermore supports the Petitioner's claim that he is being detained in violation of his due process rights. Like the Petitioner in *Kambo*, “[t]he government has not articulated a justification for the continued detention under these circumstances.” *Id.* at *73. In *Kambo*, as with this case, “the Government must still justify its continued detention with an adequate regulatory purpose.” *Id.* The regulatory apparatus found inadequate in *Kambo* is the same one that governs this case and so is the result—unlawful detention.

4. Numerous other cases have held that the auto-stay provisions violate due process.

The other cases the Court cites in its footnote all support granting this habeas corpus petition. *See* ECF No. 12. The automatic stay provisions simply do not meet minimal due process requirements. When ICE invokes them to detain a noncitizen, a constitutional violation occurs, which is the basis for this petition and warrants the Court's intervention.

CONCLUSION

To prevent the continued violation of the Petitioner's due process rights, the Court should grant his motion for a temporary restraining order while the Court considers the merits of his petition for a writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on today's date, Septmeber 4, 2025, I electronically filed the above supplemental brief by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Defendants' counsel.

/s/ Lance Curtright
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