

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

BALWINDER SINGH

PETITIONER

v.

NO. 4:25-CV-96-RGJ

SAMUEL OLSON, in his Official Capacity as
Field Office Director, Chicago Field Office,
U.S. Immigration and Customs Enforcement; and
MIKE LEWIS, in his Official Capacity as
Hopkins County Jailer

RESPONDENTS

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Respondent Samuel Olson, in his official capacity as Field Office Director for U.S. Immigration and Customs Enforcement (ICE) Chicago Field Office, responds to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should not be granted:¹

INTRODUCTION

Petitioner bears the burden to show that his detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). Petitioner's detention is lawful. After Plaintiff's arrest for driving under the influence in early July, Petitioner was properly detained under 8 U.S.C. § 1226. Under that statute, Petitioner was provided a bond hearing before an

¹ This response to Petitioner's habeas petition is filed on behalf of Respondent Samuel Olson. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Mike Lewis, the Hopkins County Jailer, as a respondent.

immigration judge. The immigration judge set bond for Petitioner, and Respondent appealed that decision. 8 C.F.R. § 1003.19(i)(2) authorizes ICE to detain Petitioner while an immigration judge's bond decision is appealed to the Board of Immigration Appeals. Petitioner is currently detained under that regulatory authority.

RELEVANT FACTUAL AND LEGAL BACKGROUND

- Petitioner, a citizen of India, entered the United States without authorization or inspection and not at a port of entry on or about May 1, 2013. [Doc. 1-3, PageID. 35.]
- Petitioner was deemed inadmissible and subject to removal. [Doc. 1, ¶ 21.]
- Petitioner was served with a Notice to Appear because an asylum officer found that he had demonstrated credible fear of being removed to India. [Doc. 1-3, PageID. 35.]
- In February 2016, Petitioner was convicted of a level 6 felony for fraud in Indiana, which the state court reduced to a Class A misdemeanor. [Doc. 1-4, PageID. 44.]
- On June 29, 2025, Petitioner was arrested in Indiana for driving under the influence. [See Doc. 1-7, PageID. 65.]
- ICE placed a detainer on Petitioner on July 2, 2025, notifying state authorities that Petitioner should remain detained after he was "released" from the state's custody. [Doc. 1-2, PageID. 33.]
- That detention decision is not at issue.
- Petitioner requested that ICE's custody determination be reviewed by an immigration judge. [Doc. 1, ¶ 25.]

- A hearing on Petitioner's request was conducted on July 16, 2025. [*Id.*, ¶ 26.]
- On July 28, the immigration judge granted Petitioner's request and ordered him released under a bond of \$6,500. [Doc. 1-1, PageID. 30.]
- On that same day, the Department of Homeland Security (DHS) timely appealed the immigration judge's bond decision to the Board of Immigration Appeals. [Doc. 1-6, PageID. 60.]
- The chief counsel to ICE's Chicago Office of the Principal Legal Advisor approved filing the appeal. [Doc. 1-7, PageID. 66.]
- DHS's appeal automatically stayed the immigration judge's custody decision under 8 C.F.R. § 1003.19(i)(2).
- 8 C.F.R. § 1003.19(i)(2) entitles the Department of Homeland Security to appeal an immigration judge's bond decision. If the requirements set out in 8 C.F.R. § 1003.6(c) are satisfied, the immigration judge's bond decision is stayed until the Board of Immigration Appeals (BIA) resolves the appeal or 90 days passes, whichever happens first. *Id.* § 1003.6(c)(4).²
- DHS filed its brief in support of appeal and argued that the immigration judge should have denied Petitioner's request for release for two reasons: (1) because Petitioner should have been mandatorily detained under 8 U.S.C. § 1225, not § 1226, and thus should not have been provided a bond hearing; and (2) because Petitioner poses a danger to the public. [Doc. 1-7, PageID. 65]; *see* 8 C.F.R. § 1236.1(c)(8) (stating

² 8 C.F.R. § 1003.6 provides for additional process, but that is not at issue in this case because the BIA has not resolved this appeal, nor has Petitioner been detained for 90 days.

that “the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons” to be released on bond).

- With regard to the first reason for DHS’s appeal of the immigration judge’s bond determination, DHS contends that 8 U.S.C. § 1225(b)(2)(A) provides the detention authority for Petitioner. Previously 8 U.S.C. § 1226(a) was interpreted to be applicable to aliens who entered the United States without admission or parole and who were in 8 U.S.C. § 1229a removal proceedings, but legal developments, including court interpretations of the Immigration and Nationality Act (INA), now show that § 1225 is the correct detention authority for Petitioner’s initial detention. That issue is currently being litigated before the BIA in other cases.

- Even assuming that § 1226 is the proper authority under which Petitioner was initially detained on July 2, 2025, DHS appealed the immigration judge’s bond determination for the alternate and independent reason that Petitioner poses a danger to the public.

- Driving under the influence is extremely dangerous and presents a serious risk of injury to other persons and property. *See Matter of Siniauskas*, 27 I. & N. Dec. 207, 208 (2018) (quoting cases). In *Matter of Siniauskas*, the BIA vacated an immigration judge’s decision to set bond for an alien arrested for drunk driving, noting “[d]riving under the influence is a significant adverse consideration in bond proceedings.” *Id.* at 209. “Drunk drivers take a grisly toll on the Nation’s roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year.” *Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016)).

○ The Attorney General was authorized to promulgate 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) under 8 U.S.C. § 1226. Those regulations reflect the Attorney General's determination that "certain bond cases require additional safeguards before an alien is released during the pendency of removal proceedings against him or her. In these cases, the immigration judge's order is only an interim one, pending review and the exercise of discretion by another of the Attorney General's delegates, the [BIA]." *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1032 (E.D. Wis.), *aff'd sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007) (quoting 71 Fed. Reg. 57873, 80); *see also Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175819, at *11-15 (Nov. 23, 2016) (report and recommendation adopted in *Altayar v. Lynch*, 2016 U.S. Dist. LEXIS 175817, 2016 WL 7373353 (Dec. 20, 2016)). "It also appears that the lower court decisions finding the automatic stay provision invalid were based on a misunderstanding of the relationship between DHS, the IJs, and the BIA, and their respective roles in exercising the authority of the Attorney General to make custody determinations in cases involving the removal of aliens." *Hussain v. Gonzales*, 492 F. Supp. 2d at 1032.

○ Petitioner has not been denied due process. DHS appealed the immigration judge's decision by following the procedures outlined set out in 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c). Petitioner can submit arguments in opposition to the BIA, and it will make a decision.

CONCLUSION

Petitioner is lawfully detained.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Calesia Henson
Assistant United States Attorney
717 W. Broadway
Louisville, KY 40202
(502) 582-6238
Timothy.thompson@usdoj.gov
Calesia.henson@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Assistant United States Attorney