

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

BALWINDER SINGH (,)
)
Petitioner,)
)
v.)
)
MIKE LEWIS, Jailer, Hopkins County Jail; and)
SAMUEL OLSON, Field Office Director, Chicago)
Field Office, Immigration and Customs)
Enforcement,)
)
Respondents.)

Case No. 4:25-CV-96-RGJ

REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Petitioner's detention is unlawful and the Respondent's own Response to the Order to Show Cause supports this. First, Respondents admit that Petitioner is detained pursuant to 8 U.S.C. section 1226, which means that Respondents' own arguments in immigration court and current appeal have no basis in law- and his detention is thus unlawful. Second, Respondents do not provide any statutory or regulatory argument to explain why this Court should not find, as numerous other district courts have, that the regulations governing Petitioner's detention are *ultra vires*.

The Respondents provide no legal argument to support the position that they held during Petitioner's custody proceedings before the Immigration Court and in the Notice of Appeal of Respondent's custody determination related to Petitioner's detention pursuant to 8 U.S.C. § 1225. Ex. 7. This position was the only argument made during the custody proceedings, and the primary argument included in the Notice of Appeal filed with the BIA. In fact, all Respondents state in their response to Petitioner's complaint is that "legal developments," now show the correct detention authority for Petitioner is to 8 U.S.C. § 1225 – without pointing to any actual

authority. Response, at 4.

Instead, Respondents attempt to distract this Court by citing Petitioner's recent arrest. They claim Petitioner is a danger to the community. But Petitioner's recent arrest has no bearing as to whether Petitioner's continued detention pursuant to 8 C.F.R. § 1003.19(i)(1) is lawful. Numerous district courts have held that this regulation is *ultra vires*. *Reynosa Jacinto v. Trump, et al*, 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025) (Ex. 8); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM (C.D. CA Aug 15, 2025); *Leal-Hernandez v. Noem* 1:25-cv-02428-JRR (D. Minn. Aug. 24, 2025); *Gunaydin v Trump* 0:25-cv-01151-JMB-DLM (D. Minn. May 21, 2025); *Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC (D. Neb. Aug. 14, 2025). And despite Respondents' attempt to argue Petitioner is a danger, the IJ already held that he is not and ordered him release on a bond. Ex. 1.

There is no congressional authority for ICE, DHS, or any agency within DHS, to unilaterally and automatically stay an IJ's bond decision. In fact, the only congressional authority cuts the other way: Congress determined that the default for noncitizens detained under Section 1226(a) is discretionary release. *Jennings*, 583 U.S. at 289. The automatic stay is not subject to review by either the IJ or the BIA. "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.' . . . Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). Petitioner is detained today solely at the unilateral directive of ICE, pursuant to a regulation written by executive agencies, not Congress: 8 C.F.R. § 1003.19(i)(2).

The regulations are written in such a way that it does not matter what either the IJ or BIA orders; if the government disagrees, the government can, through its own actions and according to its regulations, keep the noncitizen detained. And that detention could be, in reality, indefinite. “Indefinite detention of a [noncitizen]” raises “a serious constitutional problem.” *Zadvydas*, 533 U.S. at 690. The automatic stay provision detains individuals indefinitely, without a “discernible termination point” (*Ashley*, 288 F.Supp.2d at 672), “definite termination point” (*Zabadi v. Chertoff*, No. C05- 01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005)), “finite time frame” (*Id.*), “certain time parameters for final resolution” (*Zavala*, 310 F. Supp.2d at 1075), or “ascertainable end point” (*Bezmen*, 245 F.Supp.2d at 449-50).

Petitioner is seeking an order from this court for his immediate release pursuant to the order from the IJ dated July 28, 2025. Respondents are correct that he was afforded due process in front of an Immigration Judge who granted him bond. However, Respondents now deny Petitioner due process by holding him in detention despite that order for release.

Dated: August 27, 2025

Respectfully Submitted,

/s/ Lauren E. McClure

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