UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

NESTOR J. BELTRAN BARRERA, (A[redacted]),

Petitioner,

v.

JEFF TINDALL, Jailer, Oldham County Detention Center; and SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement,

Respondents.

Case No. 3:25CV-541-RGJ

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF**

The Petitioner, NESTOR J. BELTRAN BARRERA, by and through his own and proper person and through his attorneys, ERIN C. COBB, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceedings, in violation of his constitutional and statutory rights.

**Introduction**

1. Petitioner is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at the Oldham County Detention Center in La Grange, Kentucky.
2. Petitioner is a native and citizen of Mexico. He has been present in the United States for more than 20 years. He is married, and he and his wife have three U.S. citizen children, ages 17, 15, and 9. He lives with and is the primary financial support for his family in Addison, Illinois, where he they have resided in the same home for over ten years.

3. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.
4. At the time Petitioner was taken into custody, removal proceedings were initiated against him.
5. Petitioner's detention became unlawful on August 6, 2025, when an Immigration Judge granted Petitioner release on bond, but he was not released from custody. Ex. 1, Order of the Immigration Judge (Aug. 6, 2025). His continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is ultra vires.
6. Petitioner was initially detained on June 24, 2025 at Clay County Jail in Indiana upon a civil Warrant for Arrest of Alien issued by the Department of Homeland Security after immigration agents encountered Petitioner in Addison, Illinois. The warrant was issued pursuant to section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226.
7. Petitioner was first held in Chicago, Illinois, for a short time, then transferred to Bourbon County Detention Center, and finally to Oldham County Detention Center, where he remains detained.
8. Petitioner is represented in immigration removal proceedings by counsel. Petitioner has an application for cancellation of removal for certain nonpermanent residents pending before the Immigration Court. 8 U.S.C. § 1229b(b). The application is premised upon his residence in this country for more than ten years, his good moral character, and the exceptional and extremely unusual hardship that his children will suffer if he is deported from the United States. While Petitioner does have two prior criminal convictions, neither of these offenses render Petitioner ineligible for the relief he is seeking before the Immigration Court. The most recent conviction was more than ten

years ago.

9. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoining Respondent's continued detention of Petitioner to ensure his due process rights and his ability to care for his U.S. citizen children, who have needs that require Petitioner's presence and support.

10. In the alternative, Petitioner respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. See 28 U.S.C. § 2243.

**Jurisdiction and Venue**

11. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

12. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

13. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

14. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 et seq., 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

15. Venue is proper in the Western District of Kentucky because Petitioner is presently

detained by Respondents at Oldham County Detention Center – which is located within the Western District. 28 U.S.C. § 1391(b), (e)(1).

**Parties**

16. Petitioner NESTOR J. BELTRAN BARRERA is a native and citizen of Mexico. Petitioner is presently detained at Oldham County Detention Center located in La Grange, Kentucky.

17. Respondent JEFF TINDALL is being sued in his official capacity only. As the Jailer of Oldham County Detention Center, he is the custodian of the jail and all individuals detained therein, where Petitioner is presently being detained. He is, therefore, Petitioner's immediate custodian.

18. Respondent SAMUEL OLSON is being sued in his official capacity only, as the Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office. He is the Department of Homeland Security's designate for all matters concerning the detention and removal of noncitizens within the Chicago Area of Responsibility, which includes Oldham County, Kentucky.

**Custody**

19. Petitioner NESTOR J. BELTRAN BARRERA is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

**Factual and Procedural Background**

20. Petitioner NESTOR J. BELTRAN BARRERA is a native and citizen of Mexico. He has been present in the United States for more than 20 years. He is married and has

three U.S. citizen children. He lives with and is the primary financial support for his family in Addison, Illinois, Indiana, where he has resided in the same home for over ten years.

21. Petitioner first entered the United States in March, 2004, at age 19, and has remained here since that time. He did not encounter any immigration officials at or near the time of his entry.

22. On June 24, 2025, immigration agents encountered Petitioner in Addison, Illinois, when they were searching for someone else.

23. The same date, on June 24, 2025, the Department of Homeland Security issued a warrant for Respondent's arrest pursuant to INA section 236 (8 U.S.C. section 1226), according to the face of the warrant. Ex. 2, Warrant for Arrest.

24. Petitioner was detained without bond by DHS "[p]ursuant to the authority contained in section 236" of the INA. Ex. 3, Notice of Custody Determination (June 24, 2025). Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an immigration judge.

25. Also on June 24, 2025, Petitioner was issued a Notice to Appear in immigration court. The Notice to Appear designated him as "an alien present in the United States who has not been admitted or paroled." Ex. 8, Notice to Appear.

26. On August 5, 2025, Petitioner's attorney submitted a Motion for Bond Redetermination before the immigration judge and submitted evidence regarding his ties to the United States and his good character to demonstrate that he is neither a flight risk nor a danger to the community and is statutorily eligible to considered for relief from removal. Ex.

4, Motion for Bond Determination.

27. A custody and bond redetermination hearing was held on August 6, 2025, and counsel for ICE argued that Petitioner was not entitled to bond due to the government's assertion that Petitioner was detained pursuant to INA section 235, 8 U.S.C. § 1225(b)(2), rather than INA section 236, 8 U.S.C. § 1226.

28. The immigration judge determined that Petitioner was eligible for bond under INA section 236, 8 U.S.C. § 1226 and ordered that Petitioner should be released upon posting bond in the amount of $6,000.00. See Ex. 1.

29. Prior to Petitioner's bond hearings, ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. Ex. 5, Interim Guidance (July 8, 2025). Specifically, ICE is arguing that only those already admitted to the U.S. are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options at ICE's discretion. See id. This is a reversal of ICE's longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). Rocha Rosado v. Figueroa, 2025 WL 2337099, (D. Arizona August 11, 2025); see Loper Bright Enter. v. Raimondo, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is.").

30. On August 6, 2025, Respondent ICE filed a Notice of ICE Intent to Appeal Custody Redetermination ("EOIR-43") of the immigration judge's order finding Petitioner is

eligible for bond and ordering his release from custody on bond on August 6, 2025. Ex. 6, Notice of Intent to Appeal (Aug. 6, 2025). The filing of the EOIR-43 invoked the automatic stay provision of 8 C.F.R. § 1003.19(i)(2), which reflects its reversal of interpretation of bond eligibility.

31. On August 15, 2025, ICE filed a Notice of Appeal from a Decision of an Immigration Judge ("EOIR-26") confirming that their position from the custody hearing and that the basis of the appeal is ICE's reversal of interpretation and application of 8 U.S.C. section 1225. Ex. 7, Notice of Appeal (August 15, 2025).

32. Petitioner's family has repeatedly attempted to post bond; due to the automatic stay provision, ICE has refused all attempts.

33. Despite the immigration judge's order granting Petitioner bond, Petitioner remains detained. He remains in detention and separated from his family and community. He and his family are experiencing significant and deep emotional and mental trauma from this separation from one another. His youngest child is struggling to understand why her father is not around. His older children are attending counseling; the eldest already struggled with depression. His wife is struggling to financially support the family in the absence of Petitioner, who prior to his detention was the family's primary financial provider.

34. Petitioner's continued detention separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harm.

35. Despite a reasoned immigration judge decision ordering Petitioner's release and return

to his family and community upon posting bond, he remains detained five hours away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

36. Because Respondent's removal proceedings remain pending and his final hearing is not yet scheduled before the Chicago Immigration Court, there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

## Legal Framework

**Due Process Clause**

37. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." Demore v. Kim, 538 U.S. 510, 523 (2003) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

38. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. Zadvydas, 533 U.S. at 690; Demore, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. Zadvydas, 533 U.S. at 690.

39. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). In this case, to determine the due process to be afforded to Petitioner, the Court should consider (1) the private interest affected by the government action; (2) the risk

that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. Id. at 335.

**Detention Provisions under the Immigration and Nationality Act**

40. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

41. The INA authorizes detention for noncitizens under four distinct provisions:

1) **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, it permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

2) **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

4) **Detention Following Completion of Removal Proceedings. 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. 8 U.S.C. § 1231(a)(2), (6).

42. This case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration

Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.[1]

43. Following enactment of the IIRIRA, the Executive Office for Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) ***will be eligible for bond and bond redetermination***") (emphasis added).

44. For nearly thirty years, the practice of ICE, which operates under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *9 (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of

[1] Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

what the law is."). If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount set by the immigration judge in full. 8 U.S.C. § 1226(a)(2)(A).

45. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on bond. *See* 8 U.S.C. § 1252(a)(1) (1994).[2] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

46. Yet, ICE has—without warning and without any publicly stated rationale—reversed

[2] See 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); Hose v. Immigration & Naturalization Serv., 180 F.3d 992, 994 (9th Cir. 1999)(noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

course and adopted a policy of attempting to treat all individual noncitizens that were not previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after their entry as "arriving" and ineligible for bond regardless of the particularities of their case.

47. As a result, ICE is now ignoring particularities that have been historically relevant in determining whether a noncitizen should remain or custody or be released—such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest. *See* Ex. 5. Though no public announcement of this sweeping new interpretation of these statutes was provided, ICE now reasons, and argued in front of the immigration judge at Petitioner's bond redetermination hearing, that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182. *See* Ex. 7 at 4.

48. The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is in agreement with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to

conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added).

49. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225—even though he was arrested and detained under § 1226—is meritless. Petitioner was detained by ICE based on a DHS filing that clearly identified him as subject to detention "pursuant to the authority contained in section 236"; (section 236 of the INA is codified at 8 U.S.C. § 1226.). *See* Ex. 2. For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens "already in the country." *Id.* at 289. Petitioner has been in the United States for over 20 years.

50. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. *See Reynosa Jacinto v. Trump, et al,* 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado*, 2025 WL 2337099; *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). *See also* Inspection and Expedited Removal of Aliens, 62

Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

51. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ***seeking admission*** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

52. The "seeking admission" language "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.")

53. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303; *see also Romero v. Hyde*, 25-11631-BEM, 2025 WL 2403827 at *9-10 (D.Mass Aug. 19, 2025).

54. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

55. The government's interpretation also renders portions of the newly enacted provisions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

56. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. __,

145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

57. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]." By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

58. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

**Regulations to Stay Immigration Judge's Bond Order**

59. Bond decisions issued by an immigration judge can be appealed by DHS or the noncitizen to the Board of Immigration Appeals ("the Board") by filing a Notice of Appeal from a Decision of an Immigration Judge (EOIR-26) within 30 days. DHS can file a motion with the Board seeking a discretionary stay of the custody decision—whether to release the noncitizen on bond consistent with the immigration judge's order at any time during the appeal period. 8 C.F.R. § 1003.19(i)(1) (hereinafter "discretionary stay").

60. The discretionary stay requires an individualized analysis by the Board of the noncitizen's case to determine if staying the immigration judge's order is appropriate.

This analysis considers the individual's criminal history, ties to the community, flight risk, dangerousness, and the likelihood of prevailing in removal proceedings. *See, e.g., Gunaydin v. Trump*, – F.Supp.3d –, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F.Supp.2d 1071 (D. N.D. Cal. 2004); *Bezman v. Ashcroft*, 245 F.Supp.2d 446 (D. Conn. 2003).

61. In contrast, the automatic stay is a unilateral decision by ICE through a boilerplate form (EOIR-43), which does not proffer any evidence or analysis of the noncitizen's status as either a flight risk or a danger to the community. This automatic stay results in ICE, the party that lost the issue in front of the immigration judge, being able, unilaterally and without any particular grounds, to immediately prevent the execution of the immigration judge's Order of Release, which is founded on a particularized determination that the noncitizen can safely be released from custody upon posting of bond.

62. There is no congressional authority for ICE, DHS, or any agency within DHS, to unilaterally and automatically stay an immigration judge'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.

63. The automatic stay is not subject to review by either the immigration judge or the board.

64. "'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))

(emphasis added).

65. 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). This regulation states, in whole:

> Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, **any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43)** with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.
>
> 8 C.F.R. § 1003.19(i)(2) (emphasis added).

66. The regulations expand on the related procedures in 8 C.F.R. § 1003.6(c). "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 100.36(c)(4). However, the regulations provide for DHS's continued power to keep a noncitizen detained even after the automatic stay lapses.

67. "DHS may seek a discretionary stay pursuant to 8 CFR § 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay." 8 C.F.R. § 1003.6(c)(5). All DHS must do is submit a motion, and "may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings." *Id.*

68. If the Board has not resolved the custody appeal within 90 days and "[i]f the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to

decide whether or not to grant a discretionary stay." 8 C.F.R. § 1003.6(c)(5).

69. If the Board rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d).

70. This additional five-day automatic stay in the event of the Board authorizing a noncitizen's release is to provide DHS with another opportunity to keep the person detained despite orders to the contrary. "If, within that five-day [secondary automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR § 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General." 8 C.F.R. § 1003.6(d).

71. DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General, and "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." 8 C.F.R. § 1003.6(d).

72. Thus, even if the Board upheld the immigration judge's order, granted the noncitizen's bond, and ordered them released, they would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the Board denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral.

*Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no time limit for this stay or these decisions.

73. The scheme, plainly designed by the executive branch to give DHS the power to circumvent orders of both immigration judges and the Board, can be summarized as follows:

Immigration judge orders DHS to release noncitizen on bond:

1. DHS files EOIR-43 Notice of Intent to Appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
2. DHS files EOIR-26 Notice of Appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).
3. Automatic stay lapses 90 days after DHS files EOIR-26 Notice of Appeal. 8 C.F.R. § 1003.6(c)(4).
4. DHS may seek discretionary stay before 90 days lapse. 8 C.F.R. §§ 1003.6(c)(5); 1003.19(i)(1).

The Board orders release on bond or denies discretionary stay motion:

5. Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
6. Within that five business day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
7. Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
8. DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).

74. Courts have held that detaining a noncitizen pursuant to these regulations is violation of due process and that the regulations themselves exceed the statutory authority Congress gave to the Attorney General. *See Reynosa Jacinto v. Trump, et al,* 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Anicasio v. Kramer*, 4:25CV3158, 2025 WL 2374224 (D. Neb. August 14, 2025).

75. The regulations are written in such a way that it does not matter what either the immigration judge or the Board orders; if the government disagrees, the government can, through its own actions and according to its own regulations, keep the noncitizen detained. And that detention could be, in reality, indefinite.

76. "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. Chertoffi*, 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).

77. Even more troubling, the automatic stay does not provide for review by the immigration judge or the Board–a clear due process violation. A noncitizen subject to DHS's arrest and continued detention in spite of a judge ordering his release has no method to challenge the automatic stay before the immigration court or the Board. *See Ashley*, 288 F.Supp.2d at 675 ("continued detention of alien without judicial review of the automatic stay of bail determination violated alien's procedural and substantive due process rights").

78. Petitioner's continued detention under the automatic stay will never be reviewed. His only option is to wait for the Board to take up the underlying matter.

**Board of Immigration Appeals**

79. The Board's appellate process does not offer a meaningful or timely opportunity to correct Respondent's errors. According to the agency's own data, during fiscal year

2024, the Board's average processing time for a bond appeal was 204 days, approximately seven months. This means that for an average case where bond was granted in July 2025, it would not be heard until February 2026. *See Vazquez v. Bostock*, 3:25-CV- 05240-TMC (D. W.D. Wash. May 2, 2025).

80. The 204-day timeline is only for the average case. Cases can take longer or shorter, meaning that there is no definite timeline for resolution and release. Should Petitioner be required to wait months for his appellate review, this will deprive him of time with his children, spouse, family and community members, and liberty. His children, who are all U.S. citizens, are similarly deprived of the love, care, financial support, and meaningful contributions that Petitioner provides.

81. Here, Petitioner is incarcerated in jail, forced to sleep in a communal setting, and subjected to other degrading treatment.

82. While not all noncitizens succeed in their appeals, some do. The Board's months-long appellate review means that Petitioner, if he is successful, may spend months of unnecessary time in detention suffering the harms outlined above.

83. Failing to provide timely appellate review of erroneous interpretations of the INA violates the Due Process Clause.

**The Automatic Stay Violates Due Process**

84. The automatic stay "operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied." *Mohammed H. v. Trump*, – F. Supp. 3d – , No. CV 25-1576 (JWB/DTS), 2025 WL 1334847 at *6 (D. Minn. May 5,

2025); *see also Reynosa Jacinto v. Trump, et al,* 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Anicasio v. Kramer*, 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).

85. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335.

86. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner has been detained for nearly two months, preventing him from seeing children and his wife who are struggling without him, from going to work, and from participating in his community.

87. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. Unlike the typical requests for a stay which require a demonstration

of the likelihood of success on the merits, the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. An immigration judge has already determined that Petitioner is neither a flight risk nor a danger to the community.

88. But that individualized reasoned decision by the immigration judge was effectively overruled by a unilateral determination by an ICE attorney which "poses a serious risk of error." *Zavala*, 310 F.Supp.2d at 1076. This allows the DHS attorney, "who has by definition failed to persuade a judge in an adversary hearing that detention is justified," to make the stay decision without oversight or review. *Ashley*, 288 F.Supp.2d at 671. This conflates the role of prosecutor and adjudicator, which is impermissible due to the high potential for error. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).

89. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" was never officially published by DHS and was only discovered by the press observing an intraoffice memo mere weeks ago on July 8, 2025. *See* Ex. 5. As explained above, the immigration judge has already made a determination that Petitioner is appropriate to be released on bond, having considered both dangerousness and flight risk. *See* Ex. 1. Further, DHS is still able to seek a discretionary stay before the Board under 8 C.F.R. § 1003.19(i)(1) which would require some showing of likelihood of success on the merits. *Ashley*, 288 F.Supp.2d at 670-71; *Zavala*, 310 F.Supp.2d at 1079.

90. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted

without the violation." *Id.* (citation omitted) (internal quotations omitted). "To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

91. Certainly, if DHS could not invoke the automatic stay, Petitioner would have been released on bond and would be home with his wife and children and able to support his household. This would occur pursuant to the immigration judge's order that he may be released upon posting of a $6,000 bond which was and is ready to be posted on Petitioner's behalf. His continued detention through the automatic stay unilaterally invoked by ICE as a result of "interim guidance" via interoffice memo despite the immigration judge's order is actual prejudice.

92. Furthermore, it is entirely plausible that the more elaborate process of the discretionary stay (8 C.F.R. § 1003.19(i)(1)) would have resulted in the Board not granting a stay of the bond order. This is because DHS is unable to show a likelihood of success on the merits and Petitioner would be permitted to reply in opposition to the stay arguing the same grounds as the immigration judge's reasoning for granting release upon bond.

## Claims for Relief

### FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

93. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

94. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

95. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

96. The automatic stay provision keeping Petitioner detained today is unconstitutional as applied to him and in violation of his due process rights. An immigration judge ordered ICE to release Petitioner on a reasonable bond of $6,000.00, and because ICE disagrees with that order based upon a new and novel "interim guidance," it invoked an automatic stay of the order, rendering Petitioner stuck in detention.

97. The automatic stay regulation rendered Petitioner's bond hearing a charade, because the outcome of the hearing or the validity of the immigration judge's reasoning did not matter. ICE wants Petitioner detained, and through the automatic stay, it can effectively ignore the immigration judge's order to the contrary. There is no due process when the government, who lost the argument in court, gets to do what it wants anyway.

98. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

**SECOND CAUSE OF ACTION**

Violation of the Immigration and Nationality Act

99. Petitioner repeats and incorporates by reference all allegations above as though fully set forth fully herein.

100. Petitioner was detained pursuant to "authority contained in section 236" of the INA; section 236 is codified at 8 U.S.C. § 1226. Ex. 2. Despite this, DHS now argues that he is detained subject to 8 U.S.C. § 1225(b)(2) and invoked an automatic stay of the immigration judge's order granting bond on this basis.

101. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

102. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

101. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

## THIRD CAUSE OF ACTION

Ultra Vires Regulation

102. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

103. The automatic stay regulation exceeds the authority given to the Attorney General by Congress and unlawfully eliminates the immigration judge's discretionary authority

to make custody determinations. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. *See* 8 U.S.C. § 1226(a), (c). The Attorney General has delegated this authority to immigration judges, who have discretion to determine whether to release these noncitizens on bond. 8 C.F.R. §§ 1003.19, 1236.1; *see also* 28 U.S.C. § 510 (permitting the Attorney General to delegate her function to officers or employees within the Department of Justice).

104. Congress has not delegated this authority to DHS. There is no statutory authority for DHS to unilaterally stay an immigration judge's bond determination. DHS's use of the automatic stay is an unlawful use of the discretionary power granted to the Attorney General and "has the effect of mandatory detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." *Zavala*, 310 F. Supp. 2d at 1079; *see also Ashley*, 288 F. Supp. 2d at 673 ("As Congress exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § 3.19(i)(2).").

105. Here, the immigration judge determined that upon posting of set bond Petitioner is not a danger to the community or a flight risk and ordered DHS to release him upon posting of bond.

106. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), purports to give DHS the authority to unilaterally override the immigration judge's decision. It is unlawful and *ultra vires*.

**Prayer for Relief**

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Order the immediate release of Petitioner pending these proceedings;

C. Order Respondents not to transfer Petitioner out of the Western District of Kentucky during the pendency of these proceedings to preserve jurisdiction and access to counsel;

D. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment, violates the Immigration and Nationality Act and is *ultra vires*;

E. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody in accordance with the bond order from the immigration judge, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days;

F. Award reasonable attorneys' fees and costs for this action; and

G. Grant such further relief as the Court deems just and proper.

Dated: August 25, 2025

Respectfully Submitted,

/s/ Erin C. Cobb

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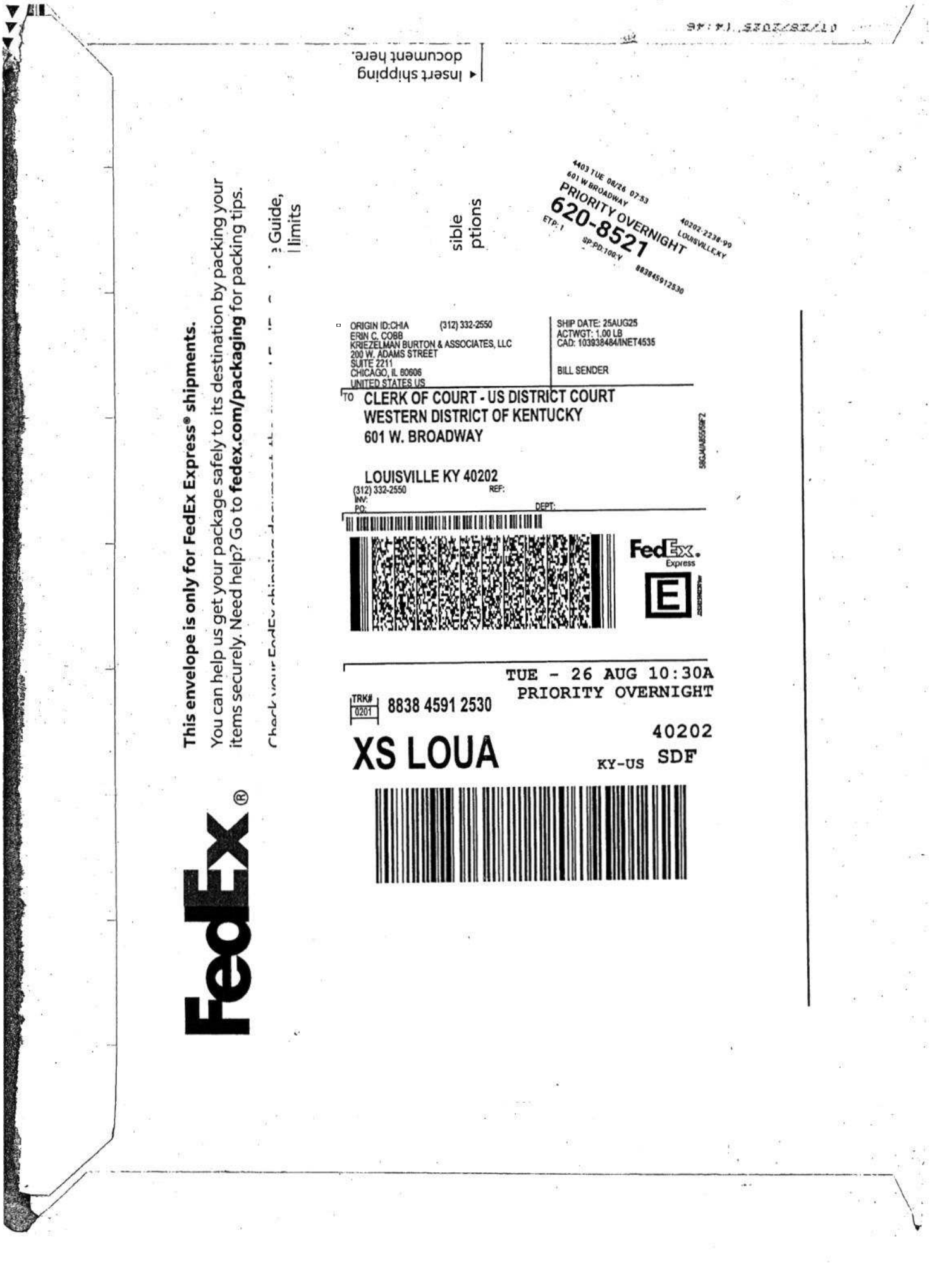

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