UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.: 1:25-cv-24442-KMW

PIOTR SIEKIERKO	)
Petitioner,	)
v.	)
GARRETT RIPA, *et al.,*	)
Respondents.	)

PETITIONER'S REPLY TO RESPONSE TO ORDER TO SHOW CAUSE

Petitioner, Piotr Siekierko respectfully submits this Reply to Respondents' Response (Dkt. 11), and in supports states as follows:

INTRODUCTION

This is a habeas corpus action challenging Petitioner's unlawful detention by ICE despite a bond order issued by an Immigration Judge on April 22, 2025. Rather than follow the procedures set forth in the INA and its regulations, ICE disregarded that adjudication and re-detained Petitioner on its own initiative. The governing statutes, regulations, and precedent make clear that ICE lacks authority to nullify an IJ's custody determination in this way. Habeas relief under 28 U.S.C. § 2241(c)(3) is therefore warranted.

Respondents seek to recast that framework by: (1) asserting that "Attorney General" in section 1226 should be read as "Secretary of Homeland Security," even though Congress deliberately left section 1226 untouched in the Laken Riley Act of 2025 while amending parallel provisions; (2) portraying unproven investigations in Poland as a "criminal history," despite certified court orders and Ministry records (Dkt. 1, Exs. G & H) showing there is no active warrant,

no conviction, and no deprivation of liberty; and (3) incorrectly invoking *Matter of Sugay* as if it permitted unilateral ICE action, when the regulation subsequently codified—8 C.F.R. § 1003.19(e)—requires that such issues be presented to the IJ.

The paramount issue in this case is ICE's ultra vires action in re-detaining Petitioner. The Respondents' statutory framing eludes a crucial textual and structural point: Statutory authority over bond redeterminations (where the individual is eligible for a bond hearing) lies with the Attorney General, not the Secretary of Homeland Security. *Matter of D-J-*, 23 I&N Dec. 572, n. 3 (A.G. 2003).

This interpretation is supported by Congress' most recent amendment to the INA in the Laken Riley Act of 2025. In certain provisions involving release and custody, Congress replaced "Attorney General" with "Secretary of Homeland Security"— but Congress left the language of 8 U.S.C. § 1226 intact. That textual choice is not accidental. It confirms what the regulations and BIA decisions already reflect: EOIR (the Attorney General's adjudicatory apparatus) retains the core role in bond redeterminations. Yet ICE did the opposite — it arrested first, rather than moving before the IJ to reopen or reconsider bond — and only now attempts to shield that unlawful action by insisting that the issue lies outside this Court's purview. The government's brief neither grapples with that redline nor explains why ICE may lawfully ignore an IJ's binding bond order without seeking the statutorily required redetermination.

Finally, the government's repeated suggestion that Petitioner "failed to disclose" a criminal history is a sleight-of-hand, and misrepresentative of the entire record. Petitioner has no convictions; his accurate statement that he has "no criminal or violent history" is not inconsistent with the existence of a separate, unresolved investigation that Polish courts have now treated with non-custodial measures. Irrespectively, that is for an IJ to decide. To treat a withdrawn order and

an investigation — both reflected in Dkt. 1, Exs. G & H — as equivalent to conviction and a "criminal history" would rewrite the meaning of that phrase and eviscerate basic fairness principles that our fundamental to the laws of our land.

Accordingly, the Court should reject the government's invitation to endorse wholesale executive re-detentions that bypass the Executive Office of Immigration Review (EOIR). The Respondents offers no lawful basis to continue Petitioner's incarceration pending a bond determination by the proper adjudicator. For the reasons explained below (and in the Amended TRO), Petitioner is likely to succeed on the merits, faces irreparable harm if detained in a deportation staging area, and the balance of equities and the public interest strongly favor interim relief restoring the IJ's bond order.

LEGAL ARGUMENT

I. Statutory Authority Lies with the Attorney General, Not ICE

Respondents argue that 8 U.S.C. § 1226(a), (b) and (c) should be read as if "Attorney General" means "Secretary of Homeland Security," relying on the Homeland Security Act of 2002, 6 U.S.C. § 251, and 8 U.S.C. § 1103(a)(1). Resp., Dkt. 11 at 5 n.1. That framing distorts both the statutory intention and scheme.

In *Matter of D-J-*,23 I&N Dec. 572, n. 3 (A.G. 2003), the Attorney General observed that Section 1102 of the HSA, 116 Stat. at 2274, added a new subsection (g) to 8 U.S.C. § 1103, which states that the role of EOIR continues in the same manner as exercised before the 2002 legislation. The Attorney General wrote:

> The Attorney General's authority to detain or authorize bond for aliens under section 236(a) of the INA is one of the authorities he retains pursuant to this provision, although this authority is shared with the Secretary of Homeland Security because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings. *See* sections 1103(a), (g) of the INA, *as amended*; 8 C.F.R. §§ 236.1(c), (d), 287.3(d) (2002)

Under 8 U.S.C. § 1103(g), it is clear that EOIR retains their portion of shared authority over custody and release determinations as that agency's role existed prior to changes made after the creation of the Department of Homeland Security.

a. *Under 8 U.S.C. § 1226(b), revocation of an IJ bond during proceedings may only be accomplished by the IJ.*

The term "Attorney General" means the Attorney General of the United States. 8 U.S.C. § 1101. And although she lacks a definition, the Secretary of Homeland Security has certain obligations under the Act. 8 U.S.C. § 1103(a). Relevant to our case, 8 USC § 1226(a), (b) and (c) reference only the "Attorney General," even though present-day context tells us logically that some of the duties described are those of the Secretary, not just the Attorney General. But nothing, no law or case, dictates that reference to the "Attorney General" means *only* the Secretary. Rather, the title "Attorney General" refers to the shared authority of both the Secretary of DHS and the Attorney General vis-a-vis IJs.

So, in non-mandatory detention cases, where an individual was lawfully admitted (as was our Petitioner) and has no criminal convictions, the Attorney General, acting through her IJs (8 CFR § 1001.1(l)) has jurisdiction over custody determinations: that is, after ICE takes someone into custody and makes the initial custody determination, sole authority over redetermination transfers to the IJ. 8 U.S.C. § 1226(a)(1); 8 CFR § 1003.19 *et. seq.*; 8 CFR § 1236.1(d). These include noncitizens, like Petitioner, who were lawfully admitted and do not have a serious conviction triggering mandatory detention under 8 U.S.C. § 1226(c). The supporting regulations make clear that where an IJ has jurisdiction over the custody determination, it is the province of the Immigration Court to make a redetermination of custody, and then only upon a showing of materially changed circumstances. 8 C.F.R. §§ 1003.19(e), 1236.1(d).

b. The Laken Riley Act supports the shared authority of the Secretary and the AG at Part 236.

With the passing of the Laken Riley Act of 2025, Congress revisited and revised multiple provisions of the INA and, section by section, substituted "Secretary of Homeland Security" for "Attorney General."[1] For example, Congress amended:

- INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) (parole authority) — striking "Attorney General" and replacing it with "Secretary of Homeland Security."

- INA § 235(b)(1), 8 U.S.C. § 1225(b)(1) (expedited removal detention) — replacing "Attorney General" with "Secretary."

- INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) (detention during removal period) — likewise amended to substitute "Secretary" for "Attorney General."

Yet in the very same Act, Congress left INA § 236, 8 U.S.C. § 1226, untouched. Section 1226(a) continues to state:

> "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General — (1) may continue to detain the arrested alien; and (2) may release the alien on … bond … or conditional parole." 8 U.S.C. § 1226(a) (emphasis added).

Congress's choice not to amend 8 U.S.C. § 1226 while revising parallel provisions is decisive. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

That choice confirms that custody and bond determinations under 8 U.S.C. § 1226 are meant to operate in tandem: DHS may effectuate the physical custody of noncitizens, but the Attorney General's adjudicatory apparatus — EOIR and IJs — retains the authority to decide whether custody should continue or be conditioned on bond. ICE's unilateral re-detention of Petitioner upset

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[1] *See* Amended TRO, Dkt. 3, Ex. A (Laken Riley Act Redline).

that balance, and that is exactly what happened here: ICE arrested Petitioner without moving before the IJ to reopen or reconsider bond, and now asks this Court to ratify that overreach.

This Court need not second-guess bond factors. The IJ already decided them. The question here is statutory authority: whether ICE may arrogate to itself adjudicatory functions that Congress and the Attorney General reserved to EOIR. It may not. Habeas relief lies to correct precisely this kind of ultra vires detention.

II. ICE's "Arrest-First, Justify-Later" Approach Violates Governing Regulations and Precedent

Respondents lean heavily on *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), to suggest ICE may revoke bond unilaterally without EOIR involvement. Resp., Dkt. 11 at 6. That misreads both *Sugay* and the current regulations.

a. By statute and regulations, there is a set process for custody and release.

Federal law provides a specific procedure for revisiting custody, including a process for appeal and even two types of stay where ICE does not agree with an IJ's order. *See Matter of Joseph*, 22 I&N Dec. 660, 663 (BIA 1999). While 8 U.S.C. § 1226(b) authorizes revocation of bond or parole, this subsection must be read in context and harmony with other statutory provisions and the regulatory scheme. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."). The BIA has adopted this approach. *See Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010). So, who is the "Attorney General" referenced at Part 236? The statute must be read in context, not just Part 236, but the INA as a whole.

b. Sugay Does Not Authorize ICE to Ignore an IJ's Bond Order

Even on its own terms, *Sugay* emphasized that a noncitizen released on bond gains a "substantial liberty interest" that cannot be withdrawn arbitrarily, but only upon new evidence and through proper process. 17 I. & N. Dec. at 640. That principle undermines ICE's position here. ICE arrested Petitioner first, without moving for reconsideration before the IJ as required by regulation, and now seeks to justify its action by pointing to facts it should have presented to EOIR in the first instance.

c. ICE Cannot Manufacture Habeas Insulation by Skipping EOIR

Respondents argue this Court lacks jurisdiction because bond determinations are for the IJ, not federal court. Resp., Dkt. 11 at 8-9. But it was Respondents that bypassed the IJ altogether. They cannot now insulate unlawful custody from habeas review by pointing to a process they themselves ignored. Habeas is precisely the mechanism to correct executive detention that exceeds statutory and regulatory bounds.

III. Respondents Ignore the Dispositive Evidence in Petitioner's Writ of Habeas Corpus

In addition to Respondents' misinterpretation of the law, Respondents as justification for re-detainment is based on dated and incorrect information. As such, their detention theory collapses when confronted with the official records *already* before this Court — and now further confirmed by recently translated Polish Documents.

- **Dkt 1. Exh. G (Warsaw District Court Order).** On July 31, 2025, the Warsaw District Court revoked the preventive measure of pretrial detention, canceled the April 22, 2024 search order, and substituted non-custodial measures such as periodic police reporting and no-contact provisions. In short, the Polish court lifted detention and removed Petitioner from any "wanted" status.

- **Dkt.1 Exh. H (Ministry of Justice Certificate).** The Polish Ministry of Justice Information Office formally certified that Petitioner has no conviction, no active warrant, and no record of liberty deprivation.

- **Declaration of Defense Counsel (Sept. 24, 2025).** Petitioner's Polish defense attorney, Michał Szulepa, confirmed that on July 31, 2025, the Warsaw District Court lifted the preventive measure of pretrial detention, which also resulted in the withdrawal of the parallel arrest warrant. *See Declaration of Attorney Michał Szulepa attached hereto as Exhibit "A."*

- **Notification of Arrest Warrant Cancellation (Sept. 3, 2025).** The Warsaw-Praga District Court issued an official notification that the arrest warrant issued on April 22, 2024, in Case No. VK 85/23, was canceled on July 31, 2025. See *Notification of Arrest Warrant Cancellation* attached hereto as Exhibit "B."

- **Certified Court Order Transmittal (Sept. 3, 2025).** The Warsaw-Praga District Court transmitted a legally binding copy of its July 31, 2025 order lifting pretrial detention and canceling the search warrant, while substituting non-custodial police supervision. See *Certified Court Order Transmittal* attached hereto as Exhibit "C."

Respondents did not rebut the dispositive evidence already before this Court, nor can they overcome the additional certified records now submitted. The official judgments and certifications from the Polish judiciary and Ministry of Justice speak for themselves: Petitioner has no warrant, no conviction, and no custodial status abroad. ICE's effort to prolong detention on the basis of foreign allegations already nullified by a foreign court is unsustainable as a matter of fact and law.

IV. This Court Retains Habeas Jurisdiction to Correct Unlawful Detention

Respondents conclude their brief by insisting that "considerations [of Petitioner's custody] are for the IJ in reviewing a bond determination and not an analysis to be completed by this Court." Resp., Dkt. 11 at 8-9. Petitioner wholeheartedly agrees. That is exactly what happened: An IJ reviewed the evidence and granted bond on April 22, 2025. It was ICE, not this Court, that refused to respect that adjudication — discarding procedure and regulation to re-arrest Petitioner on its own say-so. And it is precisely for that reason — ICE's defiance of the statutory scheme and EOIR's binding order leading to an unlawful arrest of Petitioner — that habeas jurisdiction lies here.

The statutory authority is clear. Congress provides this Court with jurisdiction to review unlawful detention. 28 U.S.C. § 2241(c)(3) authorizes the writ of habeas corpus for any person "in

custody in violation of the Constitution or laws or treaties of the United States." As aforementioned, this Court is not being asked to re-weigh bond factors; that is for the IJ. Rather, the question here is whether ICE had any lawful authority to nullify an IJ's bond order without first proceeding through EOIR, as the statute and regulations require. Section 2241 squarely empowers this Court to answer that question and to order release where detention is unlawful.

CONCLUSION

ICE's re-detention of Petitioner defied a binding IJ order, ignored statutory and regulatory limits, and rested on foreign allegations already nullified by foreign courts. Respondents have not—and cannot—supply a lawful basis for that detention. The record is clear: there is no warrant, no conviction, and no authority for ICE to erase an adjudicated bond. Under 28 U.S.C. § 2241(c)(3), habeas relief is both proper and necessary. The Court should grant Petitioner's TRO, writ, and order Petitioner's immediate release.

Respectfully submitted on this day 1st of October, 2025.

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