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 RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, by and through undersigned counsel, hereby files this Reply to Respondent's Response to his Amended Motion for Temporary Restraining Order, and in further response to Respondents' Opposition, states as follows:

INTRODUCTION

Respondents' opposition does not cure the central defect in their case: ICE lacked authority to disregard and unilaterally revoke an Immigration Judge's (IJ) April 22, 2025 bond order. The statutory and regulatory scheme under 8 U.S.C. § 1226 and 8 C.F.R. § 1003.19 makes clear that, once custody jurisdiction has vested with the Immigration Court, only an IJ may redetermine bond upon a showing of materially changed circumstances. Respondents' effort to collapse that framework into a claim of unfettered ICE discretion misstates the law and undermines the rule of law.

Nor can Respondents establish that any "changed circumstances" justified nullifying Petitioner's release. The only proffered basis—an alleged Polish warrant—was formally withdrawn

on July 31, 2025, as confirmed by certified records of the Polish Ministry of Justice. Petitioner has no active warrant or criminal record in Poland, and no U.S. criminal convictions. Thus, the asserted ground for revocation is baseless.

Respondents also argue that review is barred under INA § 236(e). That provision, however, restricts only judicial second-guessing of discretionary custody factors; it does not insulate from review whether ICE acted outside statutory authority or in violation of due process. Long-settled Supreme Court precedent confirms that courts retain habeas jurisdiction to review such claims.

Petitioner has already shown that he satisfies all four TRO factors: he is overwhelmingly likely to succeed on the merits, he suffers irreparable harm from ongoing unlawful detention, the equities weigh heavily in his favor, and the public interest supports enforcing judicial bond orders rather than allowing ICE to override them. Respondents' opposition instead highlights the necessity of this Court's intervention.

LEGAL ARGUMENT

I. Only an IJ May Revoke or Redetermine Custody Under § 1226 Once Bond Has Been Set

Respondents contend that ICE lawfully revoked Petitioner's release on bond pursuant to 8 U.S.C. § 1226(b). That is incorrect. The statutory and regulatory scheme is clear: once an IJ has exercised jurisdiction over a custody determination, the authority to redetermine or revoke bond rests exclusively with the Immigration Court, not ICE.

a. The Statutory Scheme Preserves Judicial Custody Jurisdiction

Section 1226(a) provides that the Attorney General may arrest, detain, or release an alien on bond or parole pending removal proceedings. Subsection (b) allows revocation of bond "at any time." But read in isolation, that provision cannot be divorced from the broader statutory context and implementing regulations. As the Supreme Court has cautioned, "[t]he plainness or ambiguity

of statutory language is determined not only by reference to the language itself, but also by 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).

Here, once an IJ has conducted a custody hearing and entered a bond order—as occurred on April 22, 2025—the INA and its regulations direct that further custody review belongs to the Immigration Court. See 8 C.F.R. § 1003.19 (vesting IJs with jurisdiction to redetermine custody); 8 C.F.R. § 1236.1(d) (same). That framework prevents ICE from unilaterally nullifying judicial decisions, ensuring due process and preserving the independence of immigration courts.

b. BIA Precedent Confirms ICE Cannot Nullify an IJ Bond Order Absent Changed Circumstances Presented to the IJ

The Board has long recognized that once the Immigration Court has jurisdiction, ICE cannot simply override a judicial bond order. In *Matter of Joseph*, 22 I&N Dec. 660, 663 (BIA 1999), the BIA emphasized that the INA provides structured procedures—including appeals and stays—when the government disagrees with an IJ bond order. Similarly, in *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010), the Board underscored that statutory terms must be read in harmony with the INA as a whole, not in isolation.

Respondents' reliance on *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981), is misplaced. That case involved new, material evidence elicited at a hearing before the IJ that justified bond revocation. Here, no such proceeding occurred, and the supposed "new evidence" was an alleged Polish warrant that certified government records confirm was withdrawn on July 31, 2025. Thus, unlike in *Sugay*, there was no valid change in circumstances presented to or adjudicated by the Immigration Court.

c. ICE's Unilateral Action Here Violates Due Process and Separation of Functions

Allowing ICE to override a judicial bond determination at will eviscerates the statutory custody scheme, undermines judicial review, and violates the Fifth Amendment's guarantee of due process. Petitioner lawfully posted the $5,000 bond ordered by an IJ, fully complied with its terms, and remained on the non-detained docket until ICE's unilateral re-detention. To sanction ICE's action would permit executive officers to nullify judicial orders without process, a result incompatible with due process and the structure Congress enacted.

II. 8 U.S.C. 1226(e) Does Not Bar This Court's Habeas Jurisdiction

Respondents argue that INA § 236(e), 8 U.S.C. § 1226(e), strips this Court of jurisdiction to review Petitioner's unlawful detention. Respondents even accuse Petitioner of having "ignored Section 236(e) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1226(e), which governs judicial review of detention matters." Dkt. 17, at 8. Unfortunately for the Respondents, that argument is incorrect as a matter of text, precedent, and constitutional law.

a. The Text of § 8 U.S.C. § 1226(e), Contains No Bar on Habeas Review

8 U.S.C. § 1226(e), states that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review." It does not say that courts lack jurisdiction to review whether ICE has acted within statutory authority or in violation of the Constitution. As the Supreme Court emphasized in *INS v. St. Cyr*, 533 U.S. 289, 298 (2001), there is a "strong presumption in favor of judicial review of administrative action." That presumption can be overcome only by "clear and convincing evidence" of congressional intent to preclude review, and INA § 236(e) contains no such evidence.

Indeed, the Court in *St. Cyr* made clear that "§ 1226(e) contains no explicit provision barring habeas review." *Id.* at 308–09. To the contrary, "a construction of the amendments that would

entirely preclude review of a pure question of law by any court would give rise to substantial constitutional questions." *Id.* at 300. The Court therefore held that habeas jurisdiction survives unless Congress speaks with unmistakable clarity, which it has not done here. *Id.* at 327.

b. Supreme Court Precedent Confirms Habeas Jurisdiction Over Detention Claims

In *Demore v. Kim*, 538 U.S. 510, 516–17 (2003), the Supreme Court exercised habeas jurisdiction to review the statutory basis of detention under § 1226(c), notwithstanding § 1226(e). In *Jennings v. Rodriguez*, 583 U.S. ___, 138 S. Ct. 830, 841 (2018), the Court reaffirmed that § 236(e) does not bar "challenges to the statutory framework that permits detention without bail." The Court distinguished between review of individual discretionary determinations (barred) and review of statutory or constitutional claims (not barred). Thus, both *Demore* and *Jennings* confirm that federal courts may review whether detention is lawful, even where § 1226(e) applies to the discretionary factors.

c. The Eleventh Circuit Recognizes Habeas Review of Detention Questions

The Eleventh Circuit has held that "federal courts retain jurisdiction to review constitutional challenges and questions of law regarding detention." *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1207 (11th Cir. 2016), vacated in part on other grounds. District courts in this Circuit regularly exercise habeas jurisdiction to assess whether detention is authorized by statute, and whether due process is violated by executive overreach.

d. Present Application

Petitioner is not asking this Court to re-weigh discretionary factors such as flight risk or danger. He seeks judicial review of ICE's nullification of a binding IJ bond order without statutory authority and without a material change in circumstances. That is a legal and constitutional

challenge squarely within this Court's habeas jurisdiction. Section 1226(e) provides no bar to review. *Jennings v. Rodriguez*, 138 S. Ct., at 841 (2018).

III. Respondents Appear to Have a Multifaceted Evidentiary Problem

a. Respondents Still Have Not Addressed Respondent's Evidence

Respondents continue to argue that ICE lawfully revoked Petitioner's release because "new information" came to light regarding an alleged warrant in Poland. Yet they *still* have not addressed the record evidence before this Court. Certified and translated documentation from the Polish Ministry of Justice—submitted with Petitioner's habeas petition—confirms that the warrant was formally withdrawn on July 31, 2025, and that Petitioner has no criminal record in Poland. Respondents' Opposition does not acknowledge, let alone contest, that evidence. Instead, they simply repeat compound buzzwords about "ongoing investigations" and "organized criminal groups," without providing substantiated or current proof. The statutory and regulatory framework requires a material change in circumstances before an IJ (not ICE) may revisit custody. *See* 8 C.F.R. § 1003.19(e). No such change exists here.

Yet, they continue to rely upon withdrawn allegations to justify unilateral revocation, ICE acted arbitrarily and in defiance of the governing framework. Respondents' failure to address the evidence submitted by Petitioner underscores the weakness of their position. A "revocation" grounded in conclusory assertions and disregarded documents cannot constitute lawful action under 8 U.S.C. § 1226.

b. Unsigned Statements Do Not Substantiate Their Claims

Strangely, Respondents not once, but twice rely on *Exhibit I* to suggest that Petitioner "selected" IJ review of his custody status, and that therefore he already has an adequate alternative remedy before the Immigration Court. Dkt 11, Ex. I and Dkt. 17. That is not what *Exhibit I* shows.

The form itself states "Refused to Sign" immediately below the checked box. In fact, it is not even known whose handwriting it is. Without Petitioner's signature, there is no evidence that he personally elected review, or even that he saw the box checked.

An unsigned form cannot serve as proof that Petitioner voluntarily invoked IJ review or that a hearing has been triggered. Indeed, as Respondents themselves concede, no such hearing has been scheduled. However, this is a red herring argument, as the issue is not whether Petitioner may seek another bond hearing. The issue presented is whether the arrest and detention are unlawful, because Respondents' unilateral action ignored the IJ's jurisdiction. Respondents ask this Court to adopt a philosophy that it does not matter that the government violated the law, because Petitioner can seek a new bond hearing and start over. No harm no foul. However, there is harm, so it is a foul. The laws are in place for a reason and ICE must comply with its own regulation and notions of due process. *Grigorian v. Bondi,* Case No. 25-CV-22914-RAR, 2025 U.S. Dist. LEXIS, 175489 , p. 25 (S.D.Fla Sept. 9, 2025). The Fifth Amendment to the Constitution guarantees that no person shall be deprived of life, liberty or property without due process of law. This includes aliens seeking freedom from unlawful restraint. *Id., citing Zadvydas v. Davis,* 533 U.S. 678, 690 (2001).

Moreover, Respondents' statement that nothing precludes a new bond hearing and this resolves the issue is not true. [Doc. 17, pp 7-8]. Starting over with a new bond hearing in front of the immigration judge carries negative consequences that make such a motion futile. First, if the IJ orders Petitioner's release from custody, ICE may then appeal. 8 CFR § 1003.19(c)(3), (f). And based on their their written position thus far, the agency will appeal. With that appeal, ICE may file a stay of the IJ order. The regulations include two types of stay. One is discretionary and ICE must advocate with the notice of appeal for a stay to the BIA. 8 CFR § 1003.19(i)(1). These tend to be adjudicated very quickly. The second stay is a unilateral automatic stay that allows ICE to block

the non-citizen's release from custody notwithstanding the IJ's order. 8 CFR § 1003.19(i)(2). Thus this Honorable Court will consider the breadth of ICE's strategy in this matter: in cynically advocating that Petitioner may simply file a motion for a new bond hearing, ICE knows they will trigger a new appeal period that includes the ability to unilaterally block Petitioner's release via an automatic stay. ICE's ability to block any new decision made by an IJ is why it is crucial to follow the law in this case and abide by the IJ's original bond order that is still in place. ICE must be held to the standard of filing a motion to reopen-- their burden of proof-- and evidence of materially changed circumstances that justify revocation of an (unviolated) bond. As of today, they have filed no such motion to reopen to the immigration court.

Thus, *Exhibit I* does not demonstrate that Petitioner has an available alternative remedy, just the opposite, because of ICE' automatic stay authority over a new bond decision. Nor does ICE proposal cure the violations of due process by failing to seek reopening in front of an immigration judge.

IV. Petitioner Satisfies the Remaining Temporary Restraining Order Factors

a. Petitioner has a Strong Likelihood of Success on the Merits

Petitioner is likely to succeed on the merits of his habeas petition. ICE acted in ultra vires fashion when it disregarded an IJ's April 22, 2025 bond order without presenting alleged "new evidence" to the IJ, as required by 8 C.F.R. § 1003.19(e). The Supreme Court has made clear that habeas courts retain jurisdiction to review the lawfulness of executive detention. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

Here, certified records confirm that the Polish warrant ICE cited was withdrawn months before Petitioner's re-detention, leaving no lawful basis for revocation. Courts routinely hold that when executive officials act outside their statutory authority, habeas relief is warranted. See

Galindo Arzate v. Dedos, 2025 WL 2230521, at *5–6 (S.D. Tex. May 2, 2025)* (granting TRO where ICE sought removal in defiance of statutory procedures).

b. Ongoing Unlawful Detention Constitutes Irreparable Harm

The Eleventh Circuit has recognized that "the violation of a constitutional right… constitutes irreparable injury." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). The Supreme Court has long held the same: "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner was released on a $5,000 bond ordered by an IJ, lawfully posted that bond, and fully complied with its terms. ICE's unilateral revocation of that order, without judicial authorization, strips him of liberty without process and inflicts an injury that cannot be undone. Courts consistently grant temporary restraining orders and preliminary injunctions where unlawful arrest or detention deprives a petitioner of liberty, recognizing that such injuries are irreparable. See, e.g., *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (affirming grant of preliminary injunction based on unlawful detention); *Galindo Arzate v. Dedos*, 2025 WL 2230521, at 6–7 (S.D. Tex. May 2, 2025) (granting TRO based on unlawful re-detention and holding that loss of liberty constitutes irreparable harm).

c. The Balance of Equities Favors Petitioner

The balance of equities weighs heavily in favor of Petitioner. He has no criminal convictions, complied with all conditions of release, and faces ongoing confinement and potential removal based solely on a foreign warrant that was formally withdrawn on July 31, 2025. By contrast, Respondents can point to no concrete lawful interest advanced by continued detention in defiance of an IJ's order. Courts have emphasized that speculative or withdrawn allegations cannot

outweigh an individual's liberty interest. See *Doe v. Noem*, 2025 WL 1134977, at *8 (E.D. Cal. Apr. 17, 2025)* (public safety not implicated by arrest with no charges). *Arzate* likewise rejected nearly identical arguments where the government attempted to justify detention through stale, unsubstantiated allegations. 2025 WL 2230521, at *7.

d. The Public Interest Supports Enforcing Judicial Orders

"It is always in the public interest to ensure that the government complies with the law." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The statutory framework Congress enacted assigns custody redetermination to IJ, not ICE officers. Preserving that separation of functions serves the public interest by reinforcing due process and the integrity of judicial review. As the district court explained in *Arzate*, interim relief is necessary in cases where executive action threatens to extinguish judicial review or override statutory procedures. 2025 WL 2230521, at *8.

In their Response to this Court's Order to Show Cause, Respondents urge this Court not to make decisions about whether Petitioner is a danger, as that is the province of the immigration court. Dkt. 11, at 7. Yet their Response to Petitioner's TRO is replete with arguments that Petitioner is a danger to the United States community and public safety due to an alleged investigation far away in Poland. Dkt. 17, at 4 and 10. It is the Respondents who should take their concerns to the IJ in the form of a motion to reopen bond proceedings, rather than making argument before this Court. Better yet, if Respondents believe Petitioner is truly dangerous, and actively wanted in Poland, there are procedures within the criminal justice system for arrest and extradition. Apparently, Poland has not requested extradition nor arrest through the proper chain of authorities, belying the hyperbole of Respondents' claims.

CONCLUSION

For the foregoing reasons, Petitioner has demonstrated a strong likelihood of success on the merits, irreparable harm absent relief, equities tipping sharply in his favor, and that the public interest compels enforcement of statutory and constitutional limits on executive detention. Respondents have offered no lawful basis to disregard the Immigration Judge's April 22, 2025 bond order, and their reliance on withdrawn allegations and an unsigned form underscores the absence of any material change in circumstances.

Accordingly, Petitioner respectfully requests that this Court grant his Amended Motion for Temporary Restraining Order and order his immediate release under the conditions previously set by the Immigration Judge.

Respectfully submitted on this day 3rd of October, 2025.

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