

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Hayam EL GAMAL et al.,

Petitioners-Plaintiffs,

v.

Kristi Noem et al.,

Respondents-Defendants.

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Case No. 5:25-cv-01261-FB

**REPLY IN SUPPORT OF PETITIONERS' MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Respondents characterize this action as a mere “repackaging” of a habeas petition filed by Petitioners in June 2025. ECF No. 13 at 1. That petition challenged the government’s attempt to subject Petitioners to expedited removal in violation of the Immigration and Nationality Act (“INA”) and in retaliation for their husband/father’s actions. Respondents are correct that the petition was ultimately dismissed—after the government abandoned its expedited removal plan—on jurisdictional grounds, but this is a different petition, and the Court has the power to decide it.

On September 19, 2025, Petitioners were ordered released on bond by an Immigration Judge (“IJ”), after an adversarial hearing at which they bore the burden of proof. ECF No. 1 ¶ 26. The same day, Respondents filed an automatic stay of the IJ’s order pursuant to 8 C.F.R. § 1003.19(i)(2). *Id.* ¶ 39. This petition does not challenge Petitioners’ removal proceedings nor Respondent’s “underlying discretionary decision to detain [them] during removal proceedings[.]” ECF No. 13 at 1. Rather, it challenges the constitutionality of the automatic stay authority itself, both as applied to Petitioners and on its face.

Respondents rely entirely on *Kambo v. Poppel* to argue that this Court does not have jurisdiction to hear Petitioners' due process claims. The petitioner in *Kambo* "assert[ed] that the BIA's use of its automatic and discretionary stay powers violated his right to due process." *Kambo v. Poppel*, No. SA-07-CV-800-XR, 2007 WL 3051601, at *3 (W.D. Tex. Oct. 18, 2007) (emphasis added). Judge Rodriguez concluded that the Court did not have jurisdiction to review the decision to use the automatic stay power. *Id.* at *8. But as Respondents concede, the Court "may review whether the automatic stay provision itself is unconstitutional[.]" ECF No. 13 at 5. 8 U.S.C. § 1226(e) "shields only the Attorney General's discretionary detention decisions, it does not preclude challenges to the statutory framework that permits the [non-citizen's] detention without bail." *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 22, 2025) (internal quotation omitted). That is precisely what Petitioners challenge here.

On the merits, Respondents claim that "courts differ on the constitutionality of the automatic stay provision," (an assertion which undermines their jurisdictional argument) but do not cite a single case finding that it is constitutional. The District Court for the Southern District of New York recently noted that "since DHS began regularly invoking the automatic stay provision earlier this year, *no district court has held that it comports with due process.*" *J.M.P. v. Arteta*, --- F. Supp. 3d ----, 2025 WL 2984913, at *14 (S.D.N.Y. Oct. 23, 2025) (emphasis added) (citing thirty-one cases holding the automatic stay provision unconstitutional and two holding it *ultra vires*). Against this consensus, Respondents offer only *Kambo*, a case from a time in which the automatic stay provision was used only in extraordinary circumstances, *see J.M.P.*, 2025 WL 2984913, at *11, and which did not address the provision's constitutionality.

The result in this case should be the same as it has been in every other case to address this question. The automatic stay provision violates the Due Process Clause of the Fifth Amendment

as laid out in *Mathews v. Elridge*, 424 U.S. 319, 334-35 (1976). It *maximizes* “the risk of erroneous deprivation” of an individual’s liberty interest, *Mathews*, 424 U.S. at 334-35, because it applies by definition where a non-citizen detainee has already proven that their detention is unjustified to a neutral adjudicator. The risk is compounded by the fact that the Department of Homeland Security need not make *any showing* to justify continued detention. Any cognizable interests Respondents have in civil immigration detention are protected by the bond hearing itself and their ability to seek a procedurally sound discretionary stay on a bond order. The *Mathews* factors militate strongly for Petitioners who are exceedingly likely to succeed on the merits of their constitutional challenge to the automatic stay provision.

The Court should reject Respondents’ request that it delay adjudicating this motion while the BIA considers ICE’s discretionary stay request in the hopes that Petitioners’ claims will be mooted.¹ Petitioners, including two four-year-old children, have been in Respondents’ custody for months and have already established that their continued detention is legally unjustified. The “good cause” Respondents claim is nothing more than their desire to insulate an unconstitutional regulation from review. A decision in Petitioners’ favor does not stop the BIA from granting a discretionary stay; it merely places Petitioners and Respondents in the positions they would have been in but for the use of a regulation unanimously found unconstitutional. “In our society liberty is the norm, and detention . . . is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Petitioners defeated Respondents and established that this carefully limited exception does not apply to them.

The Court should grant the motion and Petition and not permit Respondents to stack the deck against Petitioners one moment longer.

¹ Petitioners do not concede that a discretionary stay grant would moot their claims.

Dated: October 28, 2025

Respectfully Submitted,

/s/Rebecca Webber

Rebecca Webber
Tex. Bar No. 24060805
WEBBER LAW
4228 Threadgill St.
Austin, TX 78723
Tel: (512) 537-8833
Fax: (202) 333-6470
rebecca@rebweblaw.com

/s/ Christopher Godshall-Bennett

Christopher Godshall-Bennett
D.C. Bar No. 1780920
/s/ Eric Lee
Eric Lee
Mich. Bar No. P80058
LEE & GODSHALL-BENNETT LLP
Tel: (202) 949-2526
Fax: (202) 333-6470
chris@leegodshallbennett.com
eric@leegodshallbennett.com

/s/Niels Frenzen

Niels Frenzen
Cal. Bar No. 139064
USC GOULD SCHOOL OF LAW
IMMIGRATION CLINIC
699 Exposition Blvd.
Los Angeles, CA 90089
Tel: (213) 740-8933
Fax: (213) 740-5502
nfrenzen@law.usc.edu

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2025, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Christopher Godshall-Bennett
Christopher Godshall-Bennett

Attorney for Petitioners