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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 A.R.,

15 Petitioner,

16 v.

17 KRISTI NOEM, *et al.*,

18 Respondents.
19

No. 5:25-cv-03565-MEMF-PVC

**FEDERAL RESPONDENTS'
OPPOSITION TO PETITIONER'S EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Honorable Maame Ewusi-Mensah
Frimpong
United States District Judge

1 **I. INTRODUCTION**

2 Respondents hereby oppose Petitioner's *ex parte* application [Dkt. no. 7].
3 Petitioner alleges that he is being unlawfully detained because DHS has not provided any
4 lawful basis for removal; and he has been arrested and detained based on an unlawful
5 revocation of Deferred Action.

6 Contrary to Petitioner's claim that he is being unlawfully detained, he is being
7 lawfully detained pursuant to INA §236(a). Although his removal proceedings were
8 terminated by an Immigration Judge on December 9, 2025, that decision was appealed
9 by DHS on January 7, 2026 to the Board of Immigration Appeals ("BIA").
10 Consequently, his removal proceedings are currently pending. There has been no
11 administratively final order issued which substantiates Petitioner's claim that "DHS has
12 not provided any lawful basis for removal." Furthermore, the termination of Petitioner's
13 removal proceedings were addressed during his second bond hearing before the
14 Immigration Court. The Immigration Judge recognized that the termination of
15 proceedings, even upon appeal, is a material change in circumstance as to the flight risk
16 analysis. Dkt. 7-1, Ex. G (Bond Decision).

17 Furthermore, Petitioner has cited no authority stating that district court may
18 ignore the prohibition on judicial review contained in 8 U.S.C. § 1226(e) and substitute
19 its decision for that of the Immigration Judge ("IJ"). Petitioner received two bond
20 hearings, on November 17 and another on December 17. At each bond hearing,
21 Petitioner was represented by counsel, and the IJ considered Petitioner's exhibits. Both
22 times, the Immigration Court found Petitioner to be a danger to the community. This
23 Court has no habeas jurisdiction to review Petitioner's denial of bond and undo the IJ's
24 bond determination simply because Petitioner disagrees with the outcome of those
25 hearings. Petitioner may appeal his bond determination to the BIA, as he is doing.

26 Accordingly, the Court should deny this TRO Application.
27
28

II. PROCEDURAL AND FACTUAL BACKGROUND

Petitioner AR is a native and citizen of Bangladesh. *See* Decl. of Jolene Velasquez ¶ 5. On or about October 4, 2016, Petitioner was admitted to the U.S. on an A2 visa. *Id.* ¶ 6. On or about July 7, 2021, Petitioner was issued another A2 nonimmigrant visa, valid until August 18, 2022. *Id.* ¶ 7. On or about June 8, 2023, Petitioner filed Form I-360, Petition for Amerasian, Widower, or Special Immigrant. *Id.* ¶ 8. On or about October 10, 2023, the I-360 was approved and Petitioner was granted deferred action. *Id.* ¶ 9. On November 3, 2025, Petitioner's deferred action was terminated. *Id.* ¶ 10. On November 4, 2025, the Los Angeles Fugitive Unit Team apprehended Petitioner and took him into custody under Section 236(a) of the Immigration and Nationality act (INA). *Id.* ¶ 11. Petitioner was transported to the Adelanto ICE Processing Center for detention pending removal proceedings. *Id.*

On November 5, 2025, Petitioner was placed into removal proceedings with the issuance of a Notice to Appear (NTA) and was charged under INA §237(a)(1)(B) for overstaying his A2 visa. *Id.* ¶ 12. On November 17, 2025, the Immigration Judge found that he had jurisdiction to consider Petitioner's request for bond under INA §236(a), but denied bond, finding that Petitioner had not met his burden to establish that he was not a danger to the community or a flight risk. *Id.* ¶ 13. On December 9, 2025, the Immigration Judge issue an order terminating removal proceedings against Petitioner, finding that DHS had not sustained their charge under §237(a)(1)(B). *Id.* ¶ 14.

On December 17, 2025, the Immigration Judge reconsidered the bond decision of November 17, 2025, but again denied bond, finding that Petitioner had still not met his burden to establish that he was not a danger to the community. *Id.* ¶ 15. On January 7, 2026, DHS filed an appeal of the Immigration Judge's termination order with the Board of Immigration Appeals. *Id.* ¶ 16. The removal proceedings remain pending while the matter is on appeal at the Board of Immigration Appeals, and RA remains detained pursuant to INA §236(a) at the Adelanto ICE Processing Center in Adelanto, CA. *Id.* ¶ 17.

1 **III. LEGAL FRAMEWORK**

2 ICE/ERO has the discretion to detain certain non-citizens “pending a decision on
3 whether the [non-citizen] is to be removed from the United States.” 8 U.S.C. § 1226(a);
4 see 8 U.S.C. § 1226(c). Provided the non-citizen does not fall under the § 1226(c)
5 mandatory detention provisions, ICE/ERO may either “continue to detain the” non-
6 citizen or “release the [non-citizen] on” bond or conditional parole. 8 U.S.C. §
7 1226(a)(1)-(2).

8 When a non-citizen is taken into ICE/ERO custody pursuant to 8 U.S.C. §
9 1226(a), ICE/ERO makes an initial custody determination, including consideration of a
10 bond. See 8 C.F.R. §§ 236.1(c)(8), 236.1(d). ICE/ERO may “in [its] discretion, release
11 an alien. . . provided that the alien must demonstrate to the satisfaction of the officer that
12 such release would not pose a danger to property or persons, and that the alien is likely
13 to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). The ability to pay a cash
14 bond is one factor among many that ICE/ERO may consider in making the initial
15 custody determination. 8 C.F.R. § 236.1. The regulations further provide ICE/RO with
16 discretion to set a bond amount and/or prescribe other conditions for release. 8 U.S.C. §
17 1226(a); see also 8 C.F.R. §§ 236.1(c)(8), (d)(1). ICE/ERO makes these determinations
18 based on the likelihood a non-citizen may abscond and whether the non-citizen poses a
19 danger to property or persons. 8 C.F.R. § 236.1(c)(8).

20 A non-citizen may seek review of ICE/ERO’s initial custody determination before
21 an IJ, commonly referred to as a “bond hearing.” 8 C.F.R. § 236.1(d)(1); 8 C.F.R. §
22 1003.19. Upon a non-citizen’s “[a]pplication to an immigration judge” to “request
23 amelioration of the conditions under which he or she may be released[.]” the IJ may
24 decide “to detain the [non-citizen] in custody, release the [non-citizen], and determine
25 the amount of bond, if any, under which the [non-citizen] may be released[.]” 8 C.F.R. §
26 236.1(d)(1). To seek such review, the non-citizen must submit a request to the IJ either
27 orally or in writing. 8 C.F.R. § 1003.19(b). In a bond hearing, the burden is on the non-
28 citizen to establish to the satisfaction of the IJ, that he or she is not “a threat to national

1 security, a danger to the community at large, likely to abscond, or otherwise a poor bail
2 risk.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Non-citizens may present
3 evidence in support of their request for a bond determination. *See* 8 C.F.R. § 1003.19(d)
4 (“The determination of the Immigration Judge as to custody status or bond may be based
5 upon any information that is available to the Immigration Judge or that is presented to
6 him or her by the [non-citizen] or the Service.”).

7 IJs have broad discretion in deciding whether to release a non-citizen on bond.
8 *Guerra*, 24 I. & N. Dec. at 39. They can consider multiple discretionary factors,
9 including any information that the IJ may deem to be relevant. *Id.* at 40. These
10 nonexclusive factors include:

- 11 (1) whether the [non-citizen] has a fixed address in the United States;
- 12 (2) the [noncitizen’s] length of residence in the United States;
- 13 (3) the [non-citizen’s] family ties in the United States, and whether they
14 may entitle the [non-citizen] to reside permanently in the United States in
15 the future;
- 16 (4) the [non-citizen’s] employment history;
- 17 (5) the [non-citizen’s] record of appearance in court;
- 18 (6) the [non-citizen’s] criminal record, including the extensiveness of
19 criminal activity, the recency of such activity, and the seriousness of the
20 offenses;
- 21 (7) the [non-citizen’s] history of immigration violations;
- 22 (8) any attempts by the [non-citizen] to flee prosecution or otherwise escape
23 authorities; and
- 24 (9) the [non-citizen’s] manner of entry to the United States.

25 *Id.* In considering these or other relevant factors, IJs “may choose to give greater weight
26 to one factor over others, as long as the decision is reasonable.” *Id.* Further, the INA in
27 no way “limit[s] the discretionary factors that may be considered” in bond
28 determinations. *Id.*; see also 8 C.F.R. § 1003.19(d) (“The determination of the

1 Immigration Judge as to custody status or bond may be based upon any information that
2 is available to the Immigration Judge or that is presented to him or her by the [non-
3 citizen] or [ICE].”).

4 After an initial bond hearing, a non-citizen may request subsequent bond hearings
5 by showing that his or her “circumstances have materially changed since the prior bond”
6 hearing. See 8 C.F.R. § 1003.19(e). Non-citizens can then seek administrative review of
7 the IJ’s bond decision from the BIA by filing an appeal of the IJ’s order within 30 days.
8 See 8 C.F.R. § 236.1(d)(3) (“An appeal relating to bond and custody determinations may
9 be filed to the Board of Immigration Appeals[.]”); 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f),
10 1003.38. The Secretary’s “discretionary judgment” regarding “the detention or release of
11 any [noncitizen] or the grant, revocation, or denial of bond or parole[.]” is not subject to
12 judicial review. 8 U.S.C. § 1226(e). The bond decision does not statutorily have to be
13 revisited at any point in the removal process and the length of detention does not have to
14 be considered in the bond decision. *Jennings v. Rodriguez*, 583 U.S. 281, 304-07 (2018).

15 **IV. ARGUMENT**

16 **A. There Is No Jurisdiction to Contest the IJ’s Bond Decision**

17 8 U.S.C. § 1226(e) provides that bond decisions “shall not be subject to judicial
18 review” and that “[n]o court may set aside any action or decision . . . regarding the
19 detention or release of any alien or the grant, revocation, or denial of bond[.]” As the
20 Supreme Court has recognized, “§ 1226(e) precludes an alien from challenging a
21 discretionary judgment by the Attorney General or a decision that the Attorney General
22 has made regarding his detention or release.” *Jennings*, 583 U.S. at 295 (internal
23 quotations, alterations, and citations omitted). Similarly, because section 1226(e)
24 commits bond determinations to agency discretion by statute, the Court also lacks
25 jurisdiction pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii). See *Kucana v. Holder*, 558 U.S.
26 233, 241-52 (2009); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1212-13 (9th Cir. 2022)
27 (noting that court lacked jurisdiction to entertain disagreement with merits of IJ’s bond
28 decision and that disagreement with outcome of bond proceedings does not demonstrate

1 procedural due process violation). Thus, Petitioner's Application for Temporary
2 Restraining Order should be denied because the Court lacks jurisdiction to review his
3 custody determination and bond orders under both section 1226(e) and section
4 1252(a)(2)(B)(ii).

5 To the extent Petitioner may claim the procedures used at his bond hearing violate
6 due process, the IJ applied the applicable procedures set forth by 8 U.S.C. § 1226(a), 8
7 C.F.R. § 236.1, and 8 C.F.R. § 1003.19. Those procedures comply with procedural due
8 process even under the three-factor test set forth in *Mathews v. Eldridge*, 424 U.S. 319
9 (1976). *See Rodriguez Diaz* 53 F.4th at 1203-14.

10 Furthermore, to the extent Petitioner complains that he was found subject to
11 mandatory detention because he was found on two separate occasions to be a danger to
12 the community, he may appeal to the Board of Immigration Appeals.

13 **B. Alleged Violations of the APA Are Not Grounds for Release**

14 Petitioner's argument that he should be released for violations of the APA should
15 be rejected. Only final agency action is reviewable under the APA. *See Bennett v Spear*,
16 520 U.S. 154, 177-78 (1997). A court may set aside such final agency action that is
17 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5
18 U.S.C. § 706. Under this standard, "[t]he scope of [the Court's] review is narrow; ... 'a
19 court is not to substitute its judgment for that of the agency.'" *Judulang v. Holder*, 565
20 U.S. 42, 52-53 (2011) (citation omitted). For a district court to review an agency's action
21 pursuant to 5 U.S.C. § 706(2), there must be a "final agency action" that can be
22 reviewed. Two conditions must be met for there to be a "final agency action" sufficient
23 for APA review: "First, the action must mark the consummation of the agency's decision
24 making process . . . it must not be of a merely tentative or interlocutory nature. And
25 second, the action must be one by which rights or obligations have been determined, or
26 from which legal consequences will flow." *Gallo Cattle Co. v. U.S. Dep't of Agric.*, 159
27 F.3d 1194, 1198-99 (9th Cir. 1998) (internal quotation and citations omitted); see also
28 *FTC v. Standard Oil Co.*, 449 U.S. 232, 241 (1980) (action must be a definitive

statement of the agency's position).

C. Petitioner's Deferred Action Status was Legally Revoked

Petitioner argues that his Deferred Action Status was terminated in violation of his procedural due process rights, but he identifies no binding legal authority for his position.

Deferred action is an act of administrative grace. *Delgado-Chavez v. I.N.S.*, 765 F.2d 868, 869 (9th Cir. 1985) ("Compliance with the statutory requirements for suspension of deportation does not automatically entitle an alien to such relief—it is a matter of discretion and administrative grace."). The Supreme Court has also made that amply clear, calling "deferred action" a "commendable exercise in administrative discretion," but acknowledging that it is "developed without express statutory authorization." *Reno*, 525 U.S. at 484; *see also id.* (aptly observing that "[s]ince no generous act goes unpunished, . . . the INS's exercise of this discretion opened the door to litigation in instances where the INS chose *not* to exercise it"); *U.S. ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 77 (1957) (noting that "[s]uspension of deportation is a matter of discretion and of administrative grace").

The relevant regulations and statutes similarly make that clear. *See, e.g.*, 8 C.F.R. § 274a.12(c)(14) (describing "granted deferred action" as "an act of administrative convenience to the government that gives some cases lower priority" for purposes of employment eligibility); *id.* § 214.14(c)(1)(ii) ("The filing of a petition for U-1 nonimmigrant status has *no effect* on ICE's authority to execute a final order," unless the petitioner has "file[d] for a stay for removal . . ." (emphasis added)); *id.* § 214.204(b)(2)(i) (same as to T-visa) ("The filing of an Application for T Nonimmigrant Status has no effect on DHS authority or discretion to execute a final order of removal, although the applicant may request an administrative stay of removal . . ."); 8 U.S.C. § 1227(d) and 8 C.F.R. § 241.6(a) (contemplating "a request for an administrative stay of removal" on "Form I-246, Stay of Removal," but vesting the discretion to immigration officials, and listing deferred action and stay of removal as distinct concepts); 8 U.S.C. §

1 1229a(c)(2) (making clear that “the alien has the burden of establishing” admissibility
2 and lawful status).

3 ICE therefore retains discretion to determine whether a subsequent enforcement
4 action is appropriate. Petitioner does not show—nor can he—what statutory or
5 regulatory authority operates to bar his detention and/or removal here.

6 **V. CONCLUSION**

7 To the extent Petitioner disagrees with the outcome of his bond hearing, this Court
8 has no habeas jurisdiction to undo the IJ’s bond determination. Petitioner may not select
9 this Court over the BIA for his appellate forum. Furthermore, termination of Petitioner’s
10 Deferred Action Status was proper. Respondents respectfully request that Petitioner’s *Ex*
11 *Parte* TRO Application be denied.

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14 Dated: January 7, 2026

Respectfully submitted,

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* The undersigned, counsel of record for the Federal Respondents certifies that this brief
contains 2,522 words, which complies with the word limit of L.R. 11-6.1.