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DETAINED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MICHAEL OBASOLUYI (A#
Petitioner,



v.

WARDEN, STEWART DETENTION CENTER
Respondent,

EMERGENCY WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C 2241

Comes now, Petitioner, Michael Obasoluyi, Pro Se, seeking an emergency order requesting writ of Habeas Corpus and immediate release from detention because the charges and the removal proceeding against the Petitioner has been terminated by an Immigration Judge and bond issued.

BACKGROUND INFORMATION

Petitioner is a Lawful Permanent Resident of the United States with United States born Citizen wife. Petitioner plead guilty to a violation of North Carolina code N.C.G.S 20-166(a) for hit and run and was sentenced to 30 months probation to serve 30 days split sentence in the county jail. Petitioner has been in Immigration and Customs Enforcement (ICE) custody since January 23, 2024, and his bond was eventually granted after the Immigration Judge (IJ) terminated removal proceedings against Petitioner on May 15, 2025. However, the Department of Homeland Security (DHS) has now filed a Notice of ICE Intent to Appeal Custody Redetermination form EOIR-43 (see attached document) which bars the petitioner from posting bond and automatically stays the IJ's order. Petitioner argues that the invocation of the automatic stay provision by the Government under the circumstances of this case violates Petitioner's procedural due process rights. Petitioner's continued detention is now violating his Fifth Amendment right, liberty, freedom, it is cruel and unusual, and causing family separation.

The Immigration Judge (IJ) duly terminated removal proceedings because the D.H.S did not meet its burden of proving by clear and convincing evidence that the respondent is removable as charged, see 8 C.F.R § 1240.8(a), and also failed to sustain the charges of removability against the respondent, see 8 C.F.R § 1240.12(c), and thereby terminated the proceedings against the respondent.

ARGUMENTS

Section 236(a), codified at 8 U.S.C.S. 1226(a), of the Immigration and Nationality Act gives the Attorney General discretion to arrest and detain an alien pending the removal decision and discretion to release the alien on bond. The alien may seek a bond redetermination hearing of the Attorney General's custody determination with an Immigration Judge. 8 C.F.R. 236.1(d)(1). Petitioner has followed this Section of the law and applied for bond which was duly granted by the IJ. Petitioner argues that DHS is in violation of the Due Process Clause by virtue of the automatic stay of his bond. Petitioner argues that in deportation proceedings, the Government's invocation of an automatic stay provision related to Immigration Judge's (IJ) bond determination violates his due process rights and the stay has now rendered IJ's decision an empty gesture and petitioner argues that it is excessive in relation to Congress' regulatory goal.

Petitioner argues that his continued detention is an infringement of his fifth amendment right guaranteed by the constitution. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law, *see, Reno v. Flores*, 507 U.S. 292, 302, 123 L. Ed. 2d 1, 113 S. Ct. 1439 (1993). Substantive due process "*prevents the government from engaging in conduct that shocks the conscience . . . or interferes with rights implicit in the concept of ordered liberty.*" *United States v. Salerno*, 481 U.S. 739, 746, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987). Petitioner has now been afforded that due process by going through removal proceedings for over 16 months—which the removal case was terminated—and was also granted bond by the Immigration Judge, however, the respondent's failure and refusal to release the petitioner is now in conflict with the United States Constitutional right. This due process guarantee has a substantive component that forbids the government from infringing upon certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. Substantive due process protections apply to not only United States citizens, but also to the petitioner who is a lawful permanent

resident of the United States. Indeed, 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. see, *Zadvydas v. Davis*, 533 U.S. 678, 690, 150 L. Ed. 2d 653, 121 S. Ct. 2491 (2001). The Petitioner does not have any case to answer with the DHS because his case has been terminated and detention does not serve any purpose.

Petitioner was convicted of N.C.G.S 20-166(a), *emphasis added*, while the DHS is appealing the termination proceeding based on N.C.G.S 20-166(b), *emphasis added*, (see attached document). Petitioner would like to draw the attention of the court that DHS has filed an appeal that it cannot prevail because it is appealing with a completely different state code violation that the petitioner was not convicted of. And the facts and merits of N.C.G.S 20-166(a) has been fully litigated for 16 months and the DHS failed on his part to convince the Immigration Judge, hence the proceeding was terminated. The Immigration Judge gave a lengthy detailed analysis and explanation in his order (see attached document). Notably on appeal, the DHS could not and did not cite any legal authority to base its new and recent reliance of a completely different statute violation of N.C.G.S. 20-166(b) as it relates to respondent's conviction of N.C.G.S. 20-166(a). In fact, the respondent was convicted of violating N.C.G.S. 20-166(a) and not N.C.G.S. 20-166(b) as this could be seen in the plea agreement that is attached.

N.C.G.S. 20-166(b) is a statute that can be violated and prosecuted by itself, and a person can be charged with, and convicted of that statute. In fact, the violation of N.C.G.S. 20-166(b) itself is a class 1 misdemeanor. D.H.S is not relying on the Immigration Judge analysis/explanation of N.C.G.S. 20-166(a) but rather bringing up a new statute. A copy of the appeal is attached. An instance when an individual was convicted of N.C.G.S. 20-166(b) by itself could be seen in the case of *State v. Smith* 264 N.C 575, 142 S.E. 2D 149, 1965 N.C.

Petitioner argues that the automatic stay provision nullifies the very purpose of giving aliens procedural protections in deportation proceedings. It produces a patently unfair situation by "*taking the stay decision out of the hands of the Immigration Judge altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified.*" David Cole, In Aid of Removal: Due Process Limits on Immigration Detention, Emory L.J. 1003, 1031

(2002). Petitioner believes that the automatic stay provision certainly results in prejudice and affects the outcome of the proceeding by superceding the Immigration Judge's ruling making the fair hearing process unfair. A fair hearing is only meaningful if the results of that hearing are respected, otherwise it is merely a formality with no legal significance.

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that this honorable court to grant the following relief:

1. Grant a Writ of Habeas Corpus ordering the Respondent to release me immediately;

I declare under oath, penalty of perjury under the laws of the United States that the forgoing is true.

Respectfully

s/ Michael Obasoluyi

Michael Obasoluyi

Stewart Detention Center

P.O Box 248,

Lumpkin, GA 31815

CERTIFICATE OF SERVICE

I certify that on May 28, 2025, a copy of this Emergency Habeas corpus was sent to the Respondent by placing it in the outgoing mailbox and addressed as follows:

Warden
Stewart Detention Center
P.O Box 248,
Lumpkin, GA 31815

s/ Michael Obasoluyi
Michael Obasoluyi
Stewart Detention Center
P.O Box 248,
Lumpkin, GA 31815