

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

YULIETH GOMEZ MEJIA

PETITIONER

v.

NO. 4:25-CV-82-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security *et al.*

RESPONDENTS

**RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR
CLARIFICATION OF THE GOVERNMENT'S ACTIONS AND
AN EXTENSION TO REPLY TO RESPONDENT'S BRIEF [DN 15]**

After Respondents filed their brief with the Court explaining Petitioner's lawful detention and responding to specific issues raised in Petitioner's original brief, Petitioner filed the current motion, along with two others. [See Doc. 14 (Motion to Stay); Doc. 16 (Motion for Evidentiary Hearing).] In the current motion, Petitioner claims a need for clarification as to the legal foundation of her detention. That information, however, has been provided by way of the Respondents' response to this Court's Order to Show Cause [Doc. 6] and brief [Doc. 13] to which Mejia has yet to reply. Petitioner's motion should be denied, and Petitioner should file a reply brief with the Court or waive her right to a reply so that this matter may be decided. With the following brief, Respondents will address some of the issues raised in Petitioner's motion.

Instead of the credible fear interview, on August 22, 2025, Petitioner was served an I-862 Notice to Appear (NTA) before an immigration judge on September 9, 2025, in

Leitchfield, Kentucky, where she is detained at the Grayson County Detention Center.¹ [See Doc. 13-3.] Mejia was also provided with oral notice of the NTA in Spanish. [*Id.* at PageID.157.] As with other documents presented to the Court, Mejia refused to sign the NTA. [*Id.*] Nevertheless, Petitioner was properly served with the NTA, and soon she will have an opportunity to present evidence in support of her application for asylum through her attorney, should that be her choice. 8 U.S.C. § 1229(a)(1).

The current action is solely one wherein Petitioner has the burden of proving that her detention is unlawful.² The initiation of this litigation, however, did not stop law enforcement from moving forward to assess Mejia's application for asylum. A determination concerning her application for asylum is not an attempt "to circumvent the justice system and this Court's proceedings" as speciously alleged in Petitioner's motion. [Doc. 15, PageID.168]; *see also Goaner W. v. Sec'y of Homeland Sec.*, 2019 WL 11648600, 2019 U.S. Dist. LEXIS 236445, at *6-7 (D. Minn. May 10, 2019) (noting that the process before immigration authorities does not halt while the habeas petition is pending and citing other similar cases). On the contrary, Mejia is in removal proceedings. A determination of her application for asylum is part of her removal proceedings.

¹ The undersigned has learned that the September 9 initial hearing did not take place and will be rescheduled.

² *See Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)).

In Petitioner's motion, she states that the United States "attempted to justify its basis for detaining the Petitioner, arguing that she qualifies for expedited removal, therefore, her detention is lawful." [Doc. 15, PageID.167.] Mejia omits that in Respondents' stated in their response to the Court's Order to Show Cause [Doc 4] and at the hearing that Petitioner's detention was also lawful under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) because of her application for asylum. [See Doc. 6, PageID.21]; see also *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020) (citing § 1225(b)(1)(B)(ii)) ("Applicants 'shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.' § 1225(b)(1)(B)(iii)(IV). Applicants who are found to have a credible fear may also be detained pending further consideration of their asylum applications."); see also 8 C.F.R. § 208.30(f). Mejia bypassed the need to convince an asylum officer of her credible fear claim and is currently in proceedings as if she effectively demonstrated a credible fear.³ Detention, in any event, is appropriate.

³ An alien found by an asylum officer to have a credible fear of persecution receives a full-blown 8 U.S.C. § 1229a asylum hearing before an immigration judge and has a right to review by the Board of Immigration Appeals, and then the appropriate circuit court of appeals. See *DHS v. Thuraissigiam*, 591 U.S. 103, (2020) ("If the asylum officer finds an applicant's asserted fear to be credible, the applicant will receive 'full consideration' of his asylum claim in a standard removal hearing." (quoting 8 C.F.R. § 208.30(f) and further citing 8 U.S.C. § 1225(b)(1)(B)(ii))); see also 8 C.F.R. § 208.30(f) ("If an alien . . . is found to have a credible fear of persecution or torture, the asylum officer will . . . issue a Form I-862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings" under section 1229a of Title 8 of the United States Code). An alien who receives a negative credible-fear determination may also seek review by an immigration judge, but if that judge affirms the negative finding, then "the asylum officer shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III); see also 8 C.F.R. § 1208.30(g). Here, Mejia bypassed the credible fear interview as if she was determined to have credible fear, was issued an I-862, and was placed directly into the process that will lead to an

Mejia then claims that after service of the NTA, moving Petitioner into formal or standard removal proceedings pursuant to 8 U.S.C. § 1229a for purposes of determining her application for asylum, the United States “again has failed to provide the basis for detained [sic].” [Doc. 15, PageID.167.] In their brief to the Court, however, Respondents informed that for aliens “placed in expedited removal proceedings who are then referred to an immigration judge for consideration of their asylum application, 8 U.S.C. § 1225(b)(1)(B)(ii) requires detention until the final adjudication of the asylum application.” [Doc. 13, PageID.143 (citing *Dorval v. Barr*, 414 F. Supp 3d 386, 393 (W.D.N.Y. 2019) (citing *Matter of M-S-*, 27 I&N Dec. 509 (A.G. April 16, 2019) and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)).] In fact, Respondents explained lawful detention associated with applications for asylum in Part I of their brief. [*Id.*, PageID.144-45.] Respondents’ position has been clearly stated requiring no further clarification unless Petitioner sets out her argument with citation to facts and law that Respondents have not yet seen.

Finally, without any citation to legal authority or statement of relevance, Petitioner simply concludes that the “United States has shifted its actions without any meaningful notice to the Petitioner despite Counsel’s multiple attempts at obtaining the information.” [Doc 15, PageID.167.] The current actions of federal law enforcement do not amount to a “shift” but rather are part of the process Mejia began when she

asylum hearing before an immigration judge. That hearing will permit her to be represented by counsel, should she so choose.

unlawfully entered the United States and formally requested asylum. Direct written and spoken notice of the NTA to Mejia eighteen days prior to the initial hearing before the immigration judge amounted to “meaningful notice.” If Petitioner contends otherwise, she should have provided this Court and Respondents with citation to the legal foundation for such a claim.

Regardless, Mejia was given the notice required by law. Service of the NTA in person to Mejia was proper pursuant to 8 U.S.C. § 1229(a)(1) (“In removal proceedings under section 1229a of this title, written notice (in this section referred to as a ‘notice to appear’) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) . . .”). Petitioner’s assertions that she was not properly given notice of the September 9 hearing before the immigration judge are without merit.

The Court should deny Mejia’s motions and she should file her reply brief as previously ordered by the Court so that this matter may be resolved.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Michael D. Ekman
Assistant United States Attorney
717 W. Broadway
Louisville, KY 40202
(502) 582-6238
Timothy.thompson@usdoj.gov
Michael.ekman@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Assistant United States Attorney