UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PEYMAN HAGHNEJAD,

Petitioner,

v. Case No.: **3:25-cv-01143-MMH-PBD**

GARRETT J. RIPA, Field Office Director,
ICE Miami Field Office, *et al.*,

Respondents.
_______________________________________/

Petitioner's Reply to Respondent's Response to Habeas Petition

COMES NOW PEYMAN HAGHNEJAD, Petitioner in this action, by and through undersigned, and submits his Reply to the Respondents' (hereinafter, "ICE") Response to Habeas Petition. Docket Entry ("Doc.") 4 ("ICE Response").

ICE's Response asserts the Petitioner's habeas petition ("Petition") should be denied for lack of jurisdiction. Alternately, ICE's Response postures that even if this Court has jurisdiction over the petition, the Petitioner's detention is lawful and the Writ Premature. ICE' Resp. 1.

1. ICE's Response admits,

   - the Petitioner "obtained a visitor's visa, and entered the United States at or near Miami, Florida on November 10, 1999", *id.*;

   - legacy Immigration and Naturalization Service ("INS" [1]) served Respondent a Notice to Appear ("NTA") charging Respondent with inadmissibility "under [8 U.S.C. § 1182(a)(6)(A)(i)], INA §212(a)(6)(A)(i)", *id.*;

2. ICE's Response also submits,

   - "in 2009, Petitioner had adjudication withheld in the state of Florida for criminal battery", *id.* 2;

   - "ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). Petitioner is free to contend his detention under § 1225 is unlawful or argue he should instead be detained under § 1226. However, § 1225(b)(2)—not § 1226—is the certified basis on which ICE is detaining Petitioner.", *id.*

   - "ICE is detaining Petitioner "while awaiting a removal determination." *id.* 4.

   - DHS Response asserts that a habeas corpus petition is § 2241 improper to "enjoin Respondents from transferring him outside this district because it will impede his removal proceeding."

3. Each of ICE's admissions, submission, concerns are herein addressed.

[1] See *Matter of A-S-J-*, 25 I&N Dec. 893, note 1 (BIA 2012) ("The functions of the INS were transferred to the DHS on March 1, 2003, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. As part of the restructuring, the regulations were reorganized into separate chapters for the DHS and the Executive Office for Immigration Review ("EOIR"). See Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 Fed. Reg. 9824 (Feb. 28, 2003)").

The Order of Removal ICE Seeks to Execute is Premised on Incorrect Facts and an Unsustainable Charge of Inadmissibility from Legacy INS' Notice to Appear (the Agency Charging Document)

4. ICE is seeking to execute the administratively final May 18, 2000, order of removal premised on incorrect facts and an unsustainable charge of inadmissibility.

5. Legacy INS' February 2, 2000, Notice to Appear ("NTA")[2] issued to Petitioner reflects, in pertinent part and relevant to the Petitioner's response,

" ...

X *2. You are an alien present in the United States who has not been admitted or paroled.*

The service alleges that you:
...
3) You entered the United States at or near MIAMI, FL on or about ***November 10, 1999****;*
4) You were not the admitted or paroled after inspection by an Immigration Officer.
On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

> *Section 212 (a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General."*

See ICE Resp., **4-1, Exhibit 5**.

6. It was on ***September 26, 1999***—not November 10, 1999—when the Petitioner ***applied for admission*** with a visitor (B-2) visa at Dulles International Airport, Washington D.C. (IAD)—not at Miami, Florida.

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[2] The NTA is the document utilized by the DHS (in the Petitioner case, legacy INS) to formally set forth factual allegations against a noncitizen to sustain a charge(s) of inadmissibility (or removability) before the U.S. Immigration Courts in removal proceedings under 8 U.S.C. § 1229a, INA § 240. See 8 U.S.C. § 1229(a)(1), INA § 239(a)(1); 8 C.F.R. §§ 239.1(a) (DHS regulation) and 1239.1

7. Of particular relevance to this habeas petition, at the conclusion of the September 26, 1999 encounter, a legacy INS employee ***inspected*** and ***admitted*** the Petitioner into the U.S. with permission to remain in the U.S. until March 26, 2000.

8. Distinctly, ICE's Response asserts the Petitioner "obtained a visitor's visa, and entered the United States", *id.* 1. [3]

9. It is unmistakable that the factual allegations as well as the charge of inadmissibility in legacy INS' 2/2/2004 NTA were incorrect when issued to the Petitioner.

10. The erroneous factual allegations and charge of inadmissibility remain unsustainable, yet, ICE continues to seek execution of the administratively final May 18, 2001 order of removal obtained under the manifestly unsustainable NTA.

ICE is Detaining the Petitioner under the Provisions of 8 U.S.C. § 1231, INA § 241 for the Exclusive Purpose of Executing an Outstanding Order of Removal

11. ICE's Response claims,

- "ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). … 1225(b)(2)—not § 1226—is the certified basis on which ICE is detaining Petitioner.", *id.* 3
- "ICE is detaining Petitioner "while awaiting a removal determination." *id.* 4.

12. Firstly, "8 U.S.C. § 1225(b)(2)" relates exclusively to administrative removal procedures referred to as "Expedited Removal" proceedings; which the Petitioner was never subject to because on September 26, 1999 the Petitioner sought admission into the U.S. he presented a B-2 visa and admitted into the U.S.

[3] 8 U.S.C. § 1101(a)(13)(A), INA § 101(a)(13)(A), provides,

> The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

13. Secondly, "[8 U.S.C.] § 1226[, INA § 236]" relates to the "Apprehension and detention of aliens" *i.e.*, noncitizens, which ICE seeks to "enter an order of removal against"; clearly not the Petitioner's circumstances.

14. A removal determination on the Petitioner was made on May 18, 2001 when the Immigration Court entered its order of removal; made administratively final on May 6, 2002, when the Board procedurally dismissed the Petitioner's case for his failure to file a brief in support of his appeal. See ICE Resp. **Doc. 4-1, Exhibit 2**.

15. ICE is detaining the Petitioner for the sole and express purpose of executing the administratively final May 18, 2001 order of removal for which 8 U.S.C. § 1231, INA § 241, titled, "Detention and removal of aliens ordered removed" actually controls–not "8 U.S.C. § 1225, INA § 235, as ICE's Response posits at page 3.

16. The sole provision ICE is utilizing to detain the Petitioner during the "removal period" is 8 U.S.C. § 1231(a)(2), INA § 241(a)(2), titled, "Detention".

17. Indeed, the Petitioner previously became subject to an order of supervision under 8 U.S.C. § 1231(a)(3), INA § 241(a)(3), titled, "Supervision after 90-day [removal [4]] period", when the Petitioner's country of birth and citizenship, Iran, refused to accept the Petitioner after the U.S. ordered him removed. [5]

[4] 8 U.S.C. §1231(a)(1)(B), INA § 241(a)(1)(B) (describing/defining "[t]he "removal period")

[5] See Petitioner's Habeas Petition Complaint (Doc. 1-1, **Exhibits A** (Internal ICE Data (disclosed 12/11/2024) revealing Iran a Recalcitrant Country for refusing to accept its citizens after the U.S orders their citizens removed) and **Exhibit C** (ICE's 7/15/202 Pamphlet on "Visa Sanctions Against "Recalcitrant Countries").

18. ICE's response acknowledges, "[o]n June 23, 2025, the petitioner reported to the Miramar ERO office and was placed in custody without bond. *ICE Resp. at 2.* [6]

19. Clearly, the patently erroneous factual allegations and charge of inadmissibility in legacy INS' 2/2/2000 NTA which the Immigration Court relied to enter the order of removal may also serve to adversely affect the Petitioner in the future when seeking LPR status, including, when seeking other immigration benefits.

20. DHS Response correctly asserts that Petitioner's "Removal proceedings concluded in 2001", more specifically, "May 18, 2001", after the Petitioner's Form I-589 was adjudicated and denied by the U.S. Immigration Court, the initial adjudicative subcomponent of the Executive Office for Immigration Review ("EOIR"); therewith, ordering the Petitioner removed to the Islamic Republic of Iran. *id.* 5.

ICE's Detention of the Petitioner for the Purpose of Executing the Order of Removal Entered in Reliance of Erroneous Factual Allegations and an Unsustainable Charge of Inadmissibility is Unlawful

21. Because the Petitioner was "inspected and admitted" he is eligible to seek adjustment of status to that of lawful permanent resident (LPR) under 8 U.S.C. § 1255(a), INA § 245(a), upon an approved I-130, Petition for Alien Relative.

22. On October 17, 2023, the Petitioner's U.S. citizen son, Samuel Haghnejad, filed an immediate preference Form I-130 Petition for Alien Relative, on the Petitioner's behalf. [7]

[6] As ICE's Response provides, *id.* 2, on April 15, 2025, the Petitioner filed a motion to reopen with the Board of Immigration Appeals. On November 13, 2025, the Board of Immigration Appeals denied the motion to reopen. On December 11, 2025, the Petitioner filed with the Board a timely motion to reconsider its November 13, 2025 denial of the Petitioner's Motion to Reopen under agency # A077-870-580; such motion to reconsider remains pending as of the time this reply is filed.

[7] *See* **ICE Resp., Doc 4-1, *Exhibit 3***, USCIS' 2/13/2025 Notice of I-130, Petition for Alien Relative (#IOE-09-227-78395).

23. On February 13, 2025, the U.S. Citizenship and Immigration Service's (USCIS) APPROVED said petition. *Id.*

24. ICE is utilizing the outstanding and administratively final order of removal to detain the Petitioner for execution of such order. [8]

25. Legacy INS' charge of inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i)], INA §212(a)(6)(A)(i), in its 2/2/2000 NTA in no way applies to the Petitioner.

26. Finally, as ICE's Response submits (*id.* 2 and Doc. 4-1, Exhibit 1), the Petitioner is the subject of a 2009 conviction [9] for violating Florida Statute § 784.03(1), battery (simple) (a Misdemeanor of the 1st degree).

27. The Petitioner's simple battery offense is neither a crime involving moral turpitude (CIMT) [10], does not subject the Petitioner to removability or inadmissibility, and, as such, does not disqualify the Petitioner from seeking adjustment of status based on the approved immediate preference Form I-130, Petition for Alien Relative, filed on the Petitioner's behalf.

28. ICE is detaining the Petitioner with the administratively final order of removal obtained with legacy INS' charging document (NTA) containing erroneous factual allegations and an unsustainable charge of inadmissibility for the purpose of executing such; for which the Petitioner's detention is unlawful.

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[8] Petitioner establishes prejudice beyond unlawful detention because if the Petitioner had not been inspected and admitted, the Petitioner would not be able to seek adjustment of status to lawful permanent residence (LPR) with the approved Form I-130, Petition for Alien Relative, the Petitioner's U.S. citizen son filed on the Petitioner's behalf.

[9] 8 U.S.C. § 1101(a)(48)(A), INA § 101(a)(48)(A) (defining convictions).

[10] See *Sosa-Martinez v. United States Att'y Gen.*, 420 F.3d 1338, 1341 n.2 (11th Cir. 2005) (aggravating factor must be present for a State of Florida battery offense to be deemed a CIMT).

ICE is Authorized to Address the Factual Errors and Unsustainable Charge of Inadmissibility.

29. Where the factual allegations and/or the charge of deportability, removal or inadmissibility are unsustainable controlling [11] agency precedent [12] has required U.S. Immigration Court's to terminate removal proceedings.

30. Title 8 C.F.R. § 1239(f), titled, "*Termination of removal proceedings by immigration judge," provides,* An immigration judge may terminate removal proceedings to permit the alien to proceed to a final hearing on a *pending application*." (emphasis added).

31. Such termination has always been without prejudice to allow the DHS or ICE to refile a factually correct and wholly sustainable charge of inadmissibility (or removability). [13]

32. "After commencement of proceedings ... [ICE] government counsel or an officer enumerated in 8 CFR 239.1(a) [[14]] may move for dismissal of the matter on the grounds set out under 8 CFR 239(a)", *to wit*, where "(6) The notice to appear was improvidently issued." 8 C.F.R. § 1239.2(a) and (b).

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[11] 8 C.F.R. § 103.10(b) (ed. 2025) (DHS-ICE regulation), titled, "*Decisions as precedents*", provides, in relevant portion,

> "Except as Board decisions may be modified or overruled by the Board or the Attorney General, ***decisions of the Board***, and decisions of the Attorney General, ***shall be binding on all officers and employees of the Department of Homeland Security*** or immigration judges ***in the administration of the immigration laws of the United States***."

(*emphases added*); *accord*, 8 C.F.R. § 1003.1(g) (ed. 2025) (analogous EOIR (agency) regulation).

[12] See *Matter of Herrera-Vazquez*, 27 I&N Dec. 825 (BIA 2020), "[i]t is well settled that an Immigration Judge may only 'terminate removal proceedings under [specific] circumstances identified in the regulations' and where 'the charges of removability against a respondent have not been sustained.'" *Matter of J.J. Rodriguez*, 27 I&N Dec. at 763 (quoting *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462, 468 (A.G. 2018) (alteration in original)).

[13] 8 C.F.R. 1239.2(c) ("Dismissal of the matter shall be without prejudice to the alien or the Department of Homeland Security").

[14] 8 C.F.R. 239.1(a), *inter alia*, "(32) Director of enforcement and removal operations; (33) Field office directors; (34) Deputy field office directors; (35) Supervisory deportation officers; (36) Supervisory detention and deportation officers; (37) Directors or officers in charge of detention facilities." *Id.*

33. Recently the EOIR promulgated regulations providing its subcomponents, the U.S. Immigration Courts and the Board of Immigration Appeals ("the Board"), with enhanced authority to terminate removal proceedings. [15]

34. The EOIR's Final Rule provides the Board with termination "authority … [i]n removal, deportation, and exclusion proceedings"; mandating, "the Board shall terminate the case where … "(A) No charge of deportability, inadmissibility, or excludability can be sustained" and/or "(F) Termination is otherwise required by law." [16]

35. However, termination or dismissal of the Petitioner's removal proceeding would require ICE to unilaterally [17] or bilaterally [18] seek reopening of the Petitioner's removal proceeding with the Board Because the Petitioner's case was last before the Board on appeal.

36. ICE's Response goes on to offers general statements regarding ICE's authority to detain noncitizens after "the ninety day period to accomplish removal", *id.* 7, that "six months is a presumptively reasonable period to detain a removable [noncitizen] awaiting deportation under such circumstances", that a noncitizen "may be held in confinement until [ICE] has been determined that there is no significant likelihood of removal in the reasonably foreseeable future," *id.* 8-9, and that the "Petitioner's petition must be denied because he has failed to rebut the presumptive reasonableness of the length of his detention". *Id.* 9.

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[15] See EOIR's "Final Rule", titled, "*Efficient Case and Docket Management in Immigration Proceedings*". "Final rule" promulgated at 89 FR 46742 (May 29, 2025) ("effective July 24, 2024")).

[16] The EOIR's Final Rule also provides the Immigration Courts with similarly authority to terminate removal proceedings. See Final Rule, *id.* 46792 (8 C.F.R. § 1003.9 ("Office of the Chief Immigration Judge"), 8 C.F.R. § 1003.10 ("Immigration Judges") and 8 C.F.R. § 1003.18(d) ("Termination").

[17] 8 C.F.R. § 1003.2(a) ("The Board may at any time reopen … on its own motion any case in which it has rendered a decision … request to reopen … any case in which a decision has been made by the Board, which request is made by the Service").

[18] 8 C.F.R. § 1003.2(c)(3)(iii) ("jointly filed" with the Petitioner).

37. ICE's Response admits that "Petitioner entered ICE's custody on June 23, 2025" resulting in Petitioner being in custody one-hundred and seventy-one (171) days (as of the time of submitting this the Petitioner's reply).

38. However, ICE's Response fails to provide this Court with any suggestion on whether there exists a "significant likelihood of [the Petitioner's] removal [from the U.S.] in the reasonably foreseeable future" warranting continued detention of the Petitioner. *Id.* 9.

39. Because ICE is detaining the Petitioner for the purpose of executing an order of removal attained by legacy INS with erroneous factual allegations and an unsustainable charge of inadmissibility in its February 2, 2000 NTA, ICE's detention of the Petitioner is unlawful, for which this Court is authorized to GRANT the Petitioner's habeas petition.

40. The Petitioner therefore implores this Court to find that the EOIR's outstanding and administratively final May 18, 2001 order of removal was obtained by legacy INS with incorrect facts and an improper charge of deportability as found in legacy INS' 2/2/2000 NTA (ICE Resp., **4-1, Exhibit 5**) thereby, making ICE's detention of the Petitioner unlawful for which GRANTING of the Petitioner's habeas petition is warranted as a matter of law.

Respectfully submitted,

/s/Steven A. GOLDSTEIN
STEVEN A. GOLDSTEIN
Counsel for Petitioner

CERTIFICATE OF SERVICE

I STEVEN A. GOLDSTEIN, HEREBY CERTIFY, that a true and correct copy of the Petitioner's REPLY to the Respondent's Response to Habeas Corpus Petition was electronically served via this U.S. District Court's CM/ECF system this **December 11, 2025** upon,

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