

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Mr. Jonny Antonio SERAQUIVE
PAQUI,

Petitioner,

v.

JOSEPH FREDEN,
in his official capacity as Field
Office Director, Buffalo Field
Office, U.S. Immigration &
Customs Enforcement;

STEVEN KURZDORFER,
In his official capacity as Acting
Field Office Director, Buffalo Field
Office, U.S. Immigration & Customs
Enforcement;

TODD LYONS,
In his official capacity as Acting
Director, U.S. Immigration and
Customs Enforcement,

KRISTI NOEM,
In her official capacity as Secretary
of Homeland Security,

Respondent.

Civil Action No. 25-cv-1029

Immigration No. A 

REPLY TO RESPONDENTS'
MEMORANDUM OF LAW IN
OPPOSITION TO
EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING
ORDER

Oral Argument Requested

REPLY TO RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO
EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

Respondents have filed a memorandum of law dated 10/28/2025 at Document number 9 in opposition to Petitioner's emergency motion for a temporary restraining order. In the memorandum of law, respondents address the portion of the Emergency Motion for a TRO that

deals with Petitioner's request to temporarily enjoin Respondents from removing him from the country or outside of the jurisdiction. They do not address Petitioner's request for an order requiring Respondents to "require Mr. Seraquive's release or for a bond hearing on the merits be held by Respondents within 7 days, as Mr. Seraquive is suffering irreparable harm due to his present detention in violation of his statutory and due process rights." Petitioner responds as follows:

Lack of Jurisdiction Argument

Respondents' arguments that this Court lacks jurisdiction to stay removal are incorrect, and also likely inapplicable here, as Mr. Seraquive does not have a removal order in place against him at this time. Respondents cite the purported jurisdiction-stripping language in 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.") and cite *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *7 (W.D.N.Y. May 2, 2025) for this premise. However, this Court has held in that very same case that "district courts in this circuit have distinguished between challenges to ICE's discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not." *Ceesay*, citing *Torres-Jurado v. Biden*, 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) (collecting cases); *Ahmed v. Freden*, 744 F. Supp. 3d 259, 264 (W.D.N.Y. 2024) (noting that while "[d]istrict courts do not have jurisdiction over challenges to

the legality of final orders of deportation, exclusion, and removal,” they retain “jurisdiction to hear immigration-related detention cases”).

Irrespective of such, Petitioner is **not** at this time in danger of imminent removal, as there is no removal order in place for him. He is awaiting adjudication of Immigration Court proceedings. Petitioner has a final hearing scheduled (merits hearing) for November 18, at which he may be ordered removed from the country despite the fact that he has an approved I-360 petition as a Special Immigrant Juvenile. The purpose for Petitioner’s request was to have a court order in place to prevent respondents from taking illegal actions to remove Petitioner and deny him due process, which would have been unthinkable in the past but does happen with alarming frequency today.

Enjoining Movement of Petitioner

Respondents go on to argue that an order enjoining Petitioner’s transfer outside of the district is unnecessary, citing *Singh v. Whitaker*, 362 F. Supp. 3d 93, 106 (W.D.N.Y. 2019) for the premise that, because habeas jurisdiction has already vested, there is no need to enjoin the movement of the petitioner outside of the jurisdiction. Unfortunately, ICE has recently been moving individuals in their custody from jurisdiction to jurisdiction, making it next to impossible for counsel to access their clients and prepare a defense. The purpose of this request is to ensure that Mr. Seraquive has access to counsel and is not moved to remote facilities on the other side of the country where counsel is unable to communicate with him.

Bond Denial Issues That Were Not Addressed

Lastly, the Respondents have not addressed in their opposition perhaps the most important request of Petitioner – the request that this Court require Mr. Seraquive’s release or for a bond hearing on the merits be held by Respondents within 7 days, as Mr. Seraquive is suffering irreparable harm due to his present detention in violation of his statutory and due process rights. They have, however, addressed this matter in a separately-filed Motion to Dismiss at document number 10. Petitioner notes that, their argument that administrative exhaustion is unavailing as Mr. Seraquive did request a bond and was denied bond twice, ultimately, under *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 221 (BIA 2025). For the reasons as stated in the amended petition, the government has advanced a new far-reaching bond denial policy which has been squarely rejected by virtually every federal court that has addressed it (apparently except for 2 or 3 instances, but over 160 instances where it was rejected). This policy, which is premised on the incorrect legal conclusion that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings, cuts against decades of agency practice applying § 1226(a) to people like Petitioner and clearly defies the INA.¹

1. ¹ See, e.g., *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La.

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/s/ Matthew K. Borowski

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Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).