

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAVIDATH LAWRENCE RAGBIR,

Petitioner,

- against -

JEFFERSON BEAUREGARD SESSIONS III,

Respondents.

No. 18 Civ. 236 (KBF)
ECF Case

**RESPONDENTS' REPLY MEMORANDUM IN FURTHER
SUPPORT OF ITS MOTION TO VACATE PORTIONS OF THE
COURT'S ORDER TO SHOW CAUSE**

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BACKGROUND

For the reasons stated in the government's earlier-filed brief (ECF No. 17), and the reasons stated below, the government respectfully requests that the Court deny Mr. Ragbir's motion to compel ICE to return him to the New York area, and vacate the portions of its Order to Show Cause dated January 11, 2018, (1) temporarily staying Mr. Ragbir's removal, and (2) enjoining ICE from transferring Mr. Ragbir out of the New York area.

ARGUMENT

A. The government did not act in contravention of this Court's order, and the Court should not compel ICE to return Mr. Ragbir to the New York area

As explained in its earlier-filed brief, the government did not act in contravention of this Court's order. Mr. Ragbir states that this Court signed the order enjoining ICE from transferring Mr. Ragbir outside the jurisdiction at or around 4:15 p.m. on January 11, 2018. According to United Airlines' website, UA Flight 1923 departed the gate at Newark Airport at 4:11 p.m. *See* Ex. A (UA page).¹ This Office received notice of the Court's order at 4:22 p.m., and we forwarded the order to ICE within approximately 10 minutes. After receiving the Court's order, ICE made the decision to detain Mr. Ragbir in Miami and, consistent with the Court's order that Mr. Ragbir not be removed, did not place him on a connecting flight to Trinidad and Tobago. Thus, Mr. Ragbir's claims that the government acted in clear contravention of the Court's order are without merit,² and for the reasons explained in the government's earlier-filed brief, the

¹ The FlightAware website, on which Mr. Ragbir relies, indicates that the flight departed the gate at 4:35 p.m. Ragbir Motion, Ex. 3 (ECF 13-5). At the very least, there is disagreement among the websites concerning the departure time of the flight.

² Mr. Ragbir cites the Solicitor General's petition for certiorari in *Hargan v. Garza*, No. 17-654 (Pet'r Br. at 4) in support of his argument, but that situation is not analogous. In the *Hargan* petition, the government brought to the Supreme Court's attention "what appear[ed] to be material misrepresentations and omissions to government counsel designed to thwart this Court's review." Cert. Pet. at 26 (available at www.justice.gov/osc).

Court should not compel ICE to return Mr. Ragbir to the New York area.

B. The Court lacked jurisdiction to grant Mr. Ragbir injunctive relief

Mr. Ragbir argues that this Court has the inherent authority to temporarily enjoin ICE from executing a final removal order and from transferring aliens to detention facilities that it deems appropriate. To the contrary, the jurisdiction of the lower federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) (“Congress, having the power to establish the courts, must define their respective jurisdictions.”). They “possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *Sheldon*, 49 U.S. at 449 (“Courts created by statute can have no jurisdiction but such as the statute confers.”). And while “[c]ourts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities,” “[i]n many instances the inherent powers of the courts may be controlled or overridden by statute or rule.” *Degen v. United States*, 517 U.S. 820, 823 (1996) (citing, *inter alia*, *Carlisle v. United States*, 517 U.S. 416, 426 (1996); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-46 (1962)). Moreover, “[p]rinciples of deference counsel restraint in resorting to inherent power, and require its use to be a reasonable response to the problems and needs that provoke it.” *Id.* (internal citations omitted). That is, “[a] court’s inherent power is limited by the necessity giving rise to its exercise.” *Id.* at 829.

Here, as explained in the government’s earlier-filed brief, Congress has specifically cabined this Court’s authority by statute to grant stays of removal or enjoin ICE from transferring aliens to certain detention facilities.

1. Places of detention

Decisions to transfer an alien from one location to another are within the discretion of the Attorney General and therefore may not be reviewed or enjoined by the district courts. *See* 8 U.S.C. § 1231(g)(1) (“The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.”). Congress, through the INA, has explicitly limited district courts from exercising jurisdiction over matters that fall within the Attorney General’s discretion. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) (barring district courts from exercising subject matter jurisdiction over “any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter [8 U.S.C. §§ 1151 1381] to be in the discretion of the Attorney General . . .”).

Courts have consistently found that the Attorney General’s decision over where to house a detainee is within the Attorney General’s discretion. *See, e.g.,* Gov’t Br. at 4-5 (citing cases). Accordingly, the Court should vacate its order enjoining ICE from transferring Mr. Ragbir outside of the New York area, and should not require ICE to move him from the Miami area.

2. Stays of removal

Similarly, Congress unambiguously stripped district courts of jurisdiction to stay or enjoin an alien’s removal. *See* 8 U.S.C. § 1252(g); *Vasquez v. United States*, No. 15-cv-3946 (JGK), 2015 WL 4619805, at *3-4 (S.D.N.Y. Aug. 3, 2015), *affirmed* at 2d Cir. No. 16-2616 (Order Sept. 9, 2015) (“District courts within this Circuit and across the country have routinely held that they lack jurisdiction under § 1252 to grant a stay of removal.”). In his habeas petition, Mr. Ragbir seeks to challenge his detention as unlawful, but his detention is pursuant to a valid, final removal order. By seeking a stay of removal from this Court to prevent ICE from executing a lawful removal order, Mr. Ragbir is circumventing the provisions of the REAL ID Act and effectively mounting an attack on the enforceability of his removal order, which is clearly

prohibited by law.

Mr. Ragbir has exhausted his challenges to his removal order, and on January 11, 2018, he filed a second motion to reopen with the Board of Immigration Appeals, along with a stay motion. Pet'r Br. at 14; Das Decl. (ECF No. 19-1) ¶ 12. The administrative process is the appropriate forum for Mr. Ragbir to seek a stay of removal and to challenge the enforceability and validity of his removal order.³ See 8 C.F.R. §§ 241.6(a)-(b), 1241.6(a)-(b) (once a motion to reopen is filed, the alien may seek a stay of removal from the immigration court). Thus, even if the Court retains the inherent authority to stay Mr. Ragbir's removal—which it does not—principles of deference counsel restraint in the Court resorting to inherent power given that Mr. Ragbir already has received a temporary stay of removal from another court, and he is also pursuing the same relief in the Board of Immigration Appeals (the appropriate forum). See *Degen*, 517 U.S. at 823, 829.

Accordingly, the Court should vacate its order staying Mr. Ragbir's removal.

C. ICE did not violate a removal regulation

Ragbir suggests that ICE “admit[ed] to a clear intent to violate yet another regulatory authority, 8 C.F.R. § 241.22, which prohibits deportation less than 72 hours after an individual's arrest.” Pet'r Br. at 5. That regulation does not apply to Mr. Ragbir. Section 241.22 is found in subpart B to part 241, and that section is limited to the execution of final orders resulting from exclusion proceedings commenced prior to April 1, 1997. See 8 C.F.R. § 241.20. Mr. Ragbir's

³ On Thursday, January 11, 2018, Mr. Ragbir also sought a stay of removal from the U.S. District Court for the District of New Jersey (“DNJ”)—the court in which Mr. Ragbir's coram nobis proceedings are pending—and the Honorable Michael McNulty granted a temporary stay of removal pending his consideration of Ragbir's motion for a stay of removal. See Exhibit B (DNJ Order).

removal proceedings commenced in 2006. In any event, Mr. Ragbir was not removed within 72 hours of his detention.

CONCLUSION

For the foregoing reasons, the Court should deny Mr. Ragbir's motion to enforce the Court's January 11 order, and the Court should grant the government's motion to vacate the portions of the Court's January 11 order staying Mr. Ragbir's removal and enjoining ICE from transferring Mr. Ragbir to other locations outside of the New York area.

Dated: New York, New York
January 16, 2018

Respectfully,

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