
AUTOMATIC STAYS OF BOND DECISIONS:

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8 C.F.R. 1003.19(i)(2)

- Applies to cases in which DHS has set individual at "no bond" or a bond of \$10,000 or more.
- Stays any IJ order authorizing release upon DHS's filing of a Notice of Intent to Appeal Custody Redetermination (Form EOIR-43) within 1 business day.
- Stay remains in effect pending BIA decision on the bond appeal.

Old Regs: Pre - Oct. 2006

- No timely review by the BIA
- No factual or legal basis for the stay
- DHS has full discretion as to whether or not to invoke such an extreme measure.
- Found unconstitutional by at least 4 District Courts.

District Courts finding Regs Unconstitutional:

Zavala v. Ridge,
310 F.Supp.2d 1071 (N.D. Cal. 2004)

Ashley v. Ridge,
288 F.Supp.2d 662 (D.N.J. 2003)

Bezmen v. Ashcroft,
245 F.Supp.2d 446 (D.Conn. 2003)

Uritsky v. Ridge,
286 F.Supp.2d 842 (E.D. Mich. 2003)

New Regulations

- Final Rule effective November 1, 2006.
- Senior DHS official must certify 1) approval for automatic stay and 2) the existence of a factual and legal basis for stay.
- 90 day limitation for BIA review
- **NOTE: In total the stay can subject an individual to mandatory detention for over 160 days after an IJ order authorizing release.**

Cases after the Final Rule

Hussain v. Gonzales, 492 F.Supp.2d 1024 (E.D. Wis. 2007)

- New regulations not unreasonable
- Cases holding old regs unconstitutional don't apply to the new regs

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Defects found in Old Regs Remain Uncured

- Review is not timely
 - There is no "90 day time limit"
 - Permits up to over 160 days of mandatory detention *after* a neutral adjudicator determines that an individual is not a flight risk or a danger and orders release on bond.
- Violates Due Process
- Nullifies IJ Decision
- No independent review of basis for stay
- Ultra Vires to INA which authorizes release upon a showing of no flight risk or danger.

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- Automatic Stays allow ICE attorneys to unilaterally ignore evidence in the record and to ignore a bond decision by an Immigration Judge when they feel an individual should be held at no bond.
- You client can remain detained *even if* you have successfully demonstrated that s/he is not a flight risk nor a danger to the community.
- The Automatic stay regulations are unconstitutional and should continue to be challenged.

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