

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:

AJAY KUMAR

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EP-19-MC-00205-FM

**MOTION TO DISSOLVE ORDERS
OF AUTHORIZATION AND MOTION TO CLOSE CASE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the United States of America, by and through the United States Attorney for the Western District of Texas, and hereby respectfully files this Motion to Dissolve Orders of Authorization and Motion to Close Case, and in support of would show as follows:

I. PROCEDURAL AND FACTUAL HISTORY

1. On July 24, 2019, Movant filed its Emergency Ex Parte Motion for Order of Authorization to Provide Non-Consensual Examination and Non-Consensual Hydration. SEALED Doc. No. 3.

2. That same day, the Court entered its Order of Authorization. ECF No. 4-2. Therein, the Court authorized the medical staff at DHS, ICE, ICE El Paso Processing Center (“SPC”) or other providers, who are under contract with ICE, to provide for the medical care of detainees, to non-consensually hydrate in the form of IV fluids, and perform involuntary medical examinations (orthostatic blood pressure examinations, physical examinations, EKG, lab testing, and urinalysis) for thirty (30) days to assure Mr. Kumar’s condition did not decompensate to a critical juncture. *Id.* at p. 3.

3. Further, the Court ordered that, if after the medical providers performed the involuntary medical examinations and non-consensual hydration, they felt that more intrusive

medical procedures were necessary to preserve the life and health of Mr. Kumar, ICE would seek further Court approval. *Id.*

4. On August 14, 2019, Movant filed its Supplemental Emergency Motion for Order of Authorization. ECF No. 12-2. Therein, Movant sought authority for additional involuntary treatment to include nasogastric (“NG”) tube placement with necessary enteral feedings as needed for Respondent. *Id.* That same day, the Court granted the authority sought. ECF No. 13-1.

5. The Court conducted a status conference on August 19, 2019. *See* ECF No. 19, Docket Text.

6. On August 19, 2019, Respondent filed his Response to the Government’s Supplemental Emergency Motion for Order of Authorization and Request to Stay Court’s Order. ECF No. 18.

7. Movant filed its Reply on August 22, 2019. ECF No. 21. On August 27, 2019, Respondent filed his Supplemental Brief in Opposition to the Government’s Supplemental Emergency Motion for Order of Authorization. ECF. No. 25. Movant filed its Sur-Reply on September 3, 2019. ECF. No. 28.

8. On September 12, 2019, this Court entered its Memorandum Opinion and Order on Supplemental Emergency Motion for Authorization for Non-Consensual Feeding finding the Government had an obligation to keep Respondent alive, and finding nasogastric feeding was the least intrusive medical course that would fulfill that obligation. ECF No. 32.

9. In that Memorandum Opinion and Order the Court also requested bi-weekly updates on Mr. Kumar’s condition. *Id.* at p. 21.

10. Movant filed an Advisory on September 20, 2019, advising of the undersigned counsel’s understanding of Mr. Kumar’s transfer to and from the El Paso Long-Term Acute Care

(“LTAC”) Hospital, and the re-insertion and subsequent removal of the NG tube while at LTAC. ECF No. 35.

11. On September 20, 2019, after considering the ICE doctor’s medical assessment, ICE Enforcement and Removal Operations (“ERO”) evaluated and decided to release Respondent from detention pending medical clearance. Ex. 1, Declaration of Officer in Charge.

12. In the evening of September 20, 2019, ERO notified Mr. Kumar that he would be released. Mr. Kumar was taken off the hunger strike protocol after he ate breakfast and lunch on September 21, 2019. Ex. 2, Declaration of ICE Physician at ¶ 10. Medical staff is currently monitoring Respondent for refeeding syndrome. *Id.* Once Respondent is medically cleared, he will be released in accordance with ERO’s decision.¹ *See* Ex. 1.

13. Based on these developments, the Court’s Order of Authorization (ECF No. 4-2) and Supplemental Order of Authorization (ECF No. 13-1) are no longer necessary and have become moot.

14. Therefore, the United States MOVES to dissolve the Orders for Authorization issued by the Court and to close the above styled and numbered proceedings.

15. Counsel for Respondent is opposed to the instant motion.

¹ Movant respectfully informs the Court that Respondent’s release from detention is imminent. Movant will advise the Court accordingly upon his release.

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

/s/ Manuel Romero

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Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the following CM/ECF participants email to: Lynn Coyle and Christopher Benoit, Law Office of Lynn Coyle, P.L.L.C., *Attorneys for Respondent*.

/s/ Manuel Romero

MANUEL ROMERO

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:

AJAY KUMAR

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EP-19-MC-00205-FM

ORDER DISSOLVING ORDERS OF AUTHORIZATION AND CLOSING CASE

On this date came to be considered the United States’ Motion to Dissolve this Court’s Order of Authorization (ECF No. 4-2) and Supplemental Order of Authorization (ECF No. 13-1) issued in the above styled and numbered matter, and Motion to Close Case.

Through its motion, the United States advises the Court that Ajay Kumar will be released from custody on an Order of Release on Recognizance pending medical clearance by ICE medical personnel. Based on these developments, the Court’s Order of Authorization (ECF No. 4-2) and Supplemental Order of Authorization (ECF No. 13-1) are no longer necessary and have become moot.

THEREFORE, IT IS ORDERED that the United States’ Motion to Dissolve the Orders for Authorization and Motion to Close Case should be, and is hereby, **GRANTED**.

IT IS FURTHER ORDERED that, the Orders for Authorization (ECF Nos. 4-2 and 13-1) are hereby Dissolved, and the Clerk of the Court is **ORDERED** to close the above referenced matter.

SO ORDERED.

SIGNED on this the ___ day of _____, 2019.

FRANK MONTALVO
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE: §
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AJAY KUMAR § **EP-19-MC-00205-FM**
§

DECLARATION OF [REDACTED]

In accordance with 28 U.S.C. § 1746, I, [REDACTED], make the following unsworn declaration, under penalty of perjury, pertinent to the above-styled and numbered cause:

1. I am an Officer employed by the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). I am the Officer in Charge (OIC) assigned to the El Paso Service Processing Center (SPC).
2. I have been assigned to this facility since July of 2017. I am responsible for the administration of the SPC and its detainees.
3. I make this declaration upon my recent interaction with Ajay Kumar's (A215 814 283) counsel of record in his immigration case, Linda Corchado, my personal knowledge of ERO records kept in the normal course of business such as orders of release on recognizance, and information I acquired during the performance of my official duties.
4. In the morning of September 18, 2019, the physician assigned to the SPC by the ICE Health Service Corps (IHSC) expressed her concerns regarding Mr. Kumar's health to ERO personnel, including myself. She highlighted Mr. Kumar's commitment to the hunger strike as well as its duration.
5. Since Mr. Kumar had no plans to cease his hunger strike at that time, we considered Dr. [REDACTED] medical assessment in order to evaluate whether to release Mr. Kumar from ICE custody. Dr. [REDACTED] indicated that Mr. Kumar could not simply be released due to "refeeding syndrome".
6. Once local ERO leadership determined that Mr. Kumar would be released, I was tasked as the OIC to reach out to Ms. Corchado in order to notify her that Mr. Kumar would be released but would need to be medically cleared before doing so. Ms. Corchado later traveled to the SPC to confer with her client and ERO served the parties with an Order of Release on Recognizance, which is attached to this declaration as Attachment A, detailing the general conditions for Mr. Kumar's

release. Once Ms. Corchado had spoken to Mr. Kumar, she indicated to me that her client had agreed to cease his hunger strike so that IHSC could medically clear him before release.

7. On Friday, September 20, 2019, when I notified Ms. Corchado, Mr. Kumar had been on hunger strike protocol for 72 days, and he had missed a total of 220 meals since his first documented missed meal on July 9, 2019. IHSC took Mr. Kumar off the hunger strike protocol after he ate breakfast and lunch on September 21, 2019. Mr. Kumar is fully cooperating with IHSC while its personnel monitors for signs of “refeeding syndrome” prior to medically clearing him for release. Once IHSC clears Mr. Kumar for release, it will notify ERO in order for us to effectuate his immediate release.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of September 2019.



ATTACHMENT A

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE

File No.: 215 814 283

Name: Kumar, Ajay

Date: September 20, 2019

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

- You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.
- You must surrender for removal from the United States if so ordered.
- You must report in (writing) (person) to Duty Officer at El Paso Field Office on Wednesday, 10-30-2019 as directed.

8915 Montana Avenue
El Paso, TX 79925
Telephone 915-225-0700 at 9:00am
 (location of INS Office) (Time)

If you are allowed to report in writing, the report must contain your name, alien reistration number, current address, place of employment, and other pertinent information as required by the officer listed above.

- You must not change your place of residence without first securing written permission from the officer listed above.
- You must not violate any local, State or Federal laws or ordeinances.
- You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.
- Other: *Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the Department of Homland Security. Electronic monitoring is a requirement and a curfew my be imposed. Failure to comply with the conditions of your release or the requirements of the ATD program my result in a redetermination of your release conditions or your arrest and detention.*

See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.



AFOD

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the _____ language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[Redacted Signature] X Ajay Kumar 9/20/2019
 (Signature of ICE Official serving order) (Signature of Alien) Date

I hereby cancel this order of release because:

- The alien failed to comply with the conditions of release.
- The alien was taken into cutody for removal.

 (Signature of ICE Official canceling order) Date

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE
ADDENDUM

File No.: 215 814 283

Date: September 20, 2019

Name: Kumar, Ajay

- That you do not associate with known gang members, criminal associates, or be associated with any such activity.
- That you register in a substance abuse program within 14 days and provide ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a counselor.
- That you register in sexual deviancy counseling program with 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.
- That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide ICE with written proof of such within 10 days.
- That you do not commit any crimes while on this Order of Release on Recognizance.
- That you report to any parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.
- That you continue to follow any prescribed doctor's orders whether medical or psychological including taking prescribed medication.
- That you provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.
- That you provide ICE with written responses from the Embassy or Consulate regarding your request.
- Any violation of the above conditions will result in revocation of your employment authorization document.
- Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.
- Other:

x 
Alien's Signature

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:

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AJAY KUMAR

EP-19-MC-00205-FM

DECLARATION OF [REDACTED]

In accordance with 28 U.S.C. § 1746, I, [REDACTED] make the following unsworn declaration, under penalty of perjury, pertinent to the above-styled and numbered cause:

1. I am a Physician employed by the U.S. Department of Homeland Security (DHS), Immigration & Customs Enforcement (ICE). I am assigned to the ICE Medical Referral Center at the El Paso Service Processing Center (SPC). By agreement with ICE, the ICE Health Service Corps (IHSC) provides care to detainees in ICE custody.
2. I have been assigned to this facility since October 2016. I have a medical license in the State of Texas.
3. I make the declaration upon a review of Ajay Kumar's (A215 814 283) recent weekly lab work conducted on September 16, 2019, as well as my examination and treatment of Mr. Kumar.
4. Until Friday, September 20, 2019, Mr. Kumar had been on hunger strike protocol for 72 days, and he had missed a total of 220 meals since his first documented missed meal on July 9, 2019. Mr. Kumar was taken off hunger strike protocol after he ate his second meal in a row on September 21, 2019.
5. In an effort to ease the demands on personnel and time that a hunger striker poses on IHSC, I consulted with Dr. Farooque Ahmed, an internist who offers services at the El Paso Long-Term Acute Care Hospital (LTAC), an ICE subcontractor. He agreed to Mr. Kumar's transfer to LTAC for continued care in compliance with the Court's Modified Supplemental Order. Mr. Kumar was transferred to LTAC on September 16, 2019.
6. In the morning of September 18, 2019, I expressed my concerns regarding Mr. Kumar's health to ICE Enforcement and Removal Operations (ERO) personnel. My medical concerns were chiefly related to Mr. Kumar's commitment to and duration of his hunger strike.

7. Since Mr. Kumar had no plans to cease his hunger strike at that time, ERO took my assessment into consideration in order to evaluate the possibility of releasing Mr. Kumar from ICE custody. I then consulted with Dr. Ahmed and he agreed to transfer Mr. Kumar back to my care at the SPC so that I could monitor him for refeeding syndrome. Clinical complications can occur as a result of fluid and electrolyte shifts after a malnourished patient resumes eating. These complications are potentially fatal if not detected or treated early during refeeding after prolonged starvation. I anticipate that this monitoring period will take approximately one week.
8. The September 16, 2019, lab values indicated that Mr. Kumar's normal prealbumin levels of 18. Prealbumin levels respond quickly to the onset of catabolism and rise quickly when it resolves. Decreased serum levels correlate with poor nutritional status. Prior to involuntary feeding, Mr. Kumar's prealbumin level was 13.
9. Mr. Kumar's phosphorus level has remained in normal range since removal of the nasogastric tube. His September 16, 2019, phosphorus level was 4.1 (normal range is 2.5-4.5). Phosphorus is an important element that's vital to several of the body's physiological processes such as energy storage, nerve, and muscle production.
10. In the evening of September 20, 2019, ERO notified Mr. Kumar that he would be released. Mr. Kumar was taken off the hunger strike protocol after he ate breakfast and lunch on September 21, 2019. Mr. Kumar is fully cooperating with IHSC while its personnel monitors for signs of refeeding syndrome prior to medically clearing him for release.
11. New labs will be ordered tomorrow, September 24, 2019. Should those values reflect that Mr. Kumar is medically stable, IHSC will notify ERO in order to effectuate his immediate release.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of September 2019.

