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

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 180 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
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.

- 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.