IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Anton Perevoznikov,

Petitioner,

Index No.: 1:25-cv-85
VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

-against-

Michael Nessinger, Warden, Donald W. Wyatt Detention Facility;
Kristi Noem, Secretary, Department of Homeland Security;
Caleb Vitello, Acting Director of US Immigration and Customs Enforcement;
Pamela Bondi, United States Attorney General;
Sirce C. Owen, Acting Director; Executive Office for Immigration Review;

Respondents.

INTRODUCTION

1. Petitioner Anton Perevoznikov hereby seeks a Writ of Habeas Corpus releasing him immediately from detention, or in the alternative directing that he be provided with a bond hearing before an Immigration Judge forthwith.
2. Petitioner is a citizen of Kazakhstan, who has been physically present in the US since on or about 2006, and a green card holder since 2010. He has been detained by US Immigration and Customs Enforcement (ICE) since August 2024 and charged with being removeable from the US based on three criminal convictions, one of which was for exporting technology without a license, a violation of 22 U.S.C. § 2778. DHS claims that this makes him deportable under the Immigration and Nationality Act (INA) at 8 U.S.C. § 1227(a)(4)(A)(i).
3. An Immigration Judge (IJ) at the Chelmsford, Massachusetts, Immigration Court found him ineligible for a bond hearing, based on a Department of Justice regulation, 8 C.F.R. § 1003.19(h)(2)(i)(C). This regulation renders ineligible for bond and thus subject to

mandatory detention anyone alleged to be deportable under 8 U.S.C. § 1227(a)(4)(A) or (B)). Petitioner argued to the IJ that this was error, because the relevant mandatory detention provision of the INA, 8 U.S.C. § 1226(c)(1)D), only subjects to mandatory detention those non-citizens who are charged with being deportable under 8 U.S.C. § 1227(a)(4)(B) (terrorism), and the regulation could not make an additional class of non-citizens ineligible for a bond hearing. The IJ rejected that argument, finding that she was constrained to follow the Department of Justice regulations even if they conflicted with the statute.

4. Mr. Perevoznikov now brings this petition for a writ of habeas corpus, seeking a declaratory judgment that 8 C.F.R. § 1003.19(h)(2)(i)(C) is ultra vires in that it makes an additional class of non-citizens subject to mandatory detention, beyond that authorized by Congress in the INA, and that it does not make him ineligible for a bond, as well as orders directing Respondents to either release him from custody or else to grant him a bond hearing forthwith.

JURISDICTION

5. This action arises under the U.S. Constitution and the Immigration and Nationality Act, at 8 U.S.C. §1101 et seq. This court has habeas corpus jurisdiction pursuant to 5 U.S.C. §703, 28 U.S.C. §2241 et seq., and Article I, §9, clause 2 of the United States Constitution (suspension clause).
6. Petitioner is in custody under color of the authority of the United States, in violation of the constitution and laws of the United States.
7. The INA, at 8 U.S.C. § 1152(b)(9), providing that "judicial review of all questions of law

and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States ... shall be available only in judicial review of a final order under this section.", does not preclude Article III habeas jurisdiction "over challenges to detention." *Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007)

VENUE

8. Venue lies in this Court because the Petitioner is detained at the Donald W. Wyatt Detention Facility located in Central Falls, Rhode Island.

PARTIES

9. Petitioner Anton Perevoznikov is a citizen of Kazakhstan, who is currently detained by Respondents at the Donald W. Wyatt Detention Facility located in Central Falls, Rhode Island.

10. Respondent Michael Nessinger is the Warden at the Donald W. Wyatt Detention Facility, where Petitioner is detained, and is sued in his official capacity. In this capacity he is Petitioner's physical and legal custodian.

11. Respondent Kristi Noem is Secretary of the Department of Homeland Security of the United States, an agency of the US government, responsible for administration and enforcement of the nations' immigration laws.

12. Respondent Caleb Vitello is Acting Director of US Immigration and Customs Enforcement (ICE), the division within Respondent DHS responsible for the detention and deportation of non-citizens, and for the supervision and threatened detention and

deportation of Petitioner.

13. Respondent Pamela Bondi is the United States Attorney General, who is responsible for the actions of the US Department of Justice, including its sub-agency the Executive Office for Immigration Review, of which the US Immigration Courts are a part.

14. Respondent Sirce C. Owen is the Acting Director of the Executive Office for Immigration Review, of which the US Immigration Courts are a part.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Petitioner is not required to exhaust administrative remedies prior to filing this Petition. There are also no meaningful administrative remedies available to Petitioner. Precedential decisions of the Board of Immigration Appeals, which bind the decisions of Immigration Judges, mandate that Immigration Judges follow EOIR regulations, even where they conflict with statutes passed by Congress, *In Re Ponce De Leon-Ruiz*, 21 I. & N. Dec. 154, 158 (BIA 1996) ("A regulation promulgated by the Attorney General has the force and effect of law as to this Board and Immigration Judges."), *Matter of Anselmo*, 20 I. & N. Dec. 25, 30 (BIA 1989) ("A regulation promulgated by the Attorney General has the force and effect of law as to this Board and immigration judges, and neither has any authority to consider challenges to regulations implemented by the Attorney General, any more than there is authority to consider constitutional challenges to the laws we administer.")

16. Further, an appeal to the Board of Immigration Appeals would take many months, without offering Petitioner any opportunity for immediate or interim relief. Petitioner therefore has no other remedy at law but to seek habeas relief from this Court.

RELEVANT LAW

17. 8 U.S.C. § 1226 governs the detention of non-citizens pending removal proceedings. § 1226(a) authorizes the arrest, detention, and release on a bond or conditional parole of a non-citizen pending a decision on whether they are to be removed from the United States. § 1186(b) authorizes the revocation of a bond or parole granted under § 1226(a). § 1186(c), known as the "mandatory detention" statute, renders ineligible for bond pending removal proceedings several classes of non-citizens, including, at § 1226(c)(1)(D), any non-citizen who is deportable under 8 U.S.C. § 1227(a)(4)(B).

18. 8 U.S.C. § 1227(a)(4) makes two discrete classes of non-citizens deportable under "security and related grounds". Sub-paragraph (A) makes deportable those who have engaged in any (i) activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information; (ii) any other criminal activity which endangers public safety or national security, or (iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means. Sub-paragraph (B) makes deportable any non-citizen alleged to have engaged in terrorist activities as described in subparagraph (B) or (F) of 8 U.S.C. § 1182(a)(3) (the terrorism grounds of inadmissibility). Only those deportable under sub-paragraph (B) are ineligible for a bond under 8 U.S.C. § 1226(c)(1)(D).

19. The regulations governing the authority of Immigration Judges to hold bond hearings can be found at 8 C.F.R.§ 1003.19. 8 C.F.R.§ 1003.19(a) and (b) provide that Immigration

Judges can determine or re-determine conditions of custody set by DHS (in other words, hold a bond hearing). 8 C.F.R.§ 1003.19(h)(2)(i) lists the categories of non-citizens who are not eligible for a bond hearing before an Immigration Judge, and includes at 8 C.F.R. § 1003.19(h)(2)(i)(C) anyone deportable under 8 U.S.C. § 1187(a)(4)(A) or (B), thus requiring mandatory detention for a wider set of people than those specified in the INA at 8 U.S.C. § 1226(c)(1)(D).

FACTS

20. Petitioner is a native and citizen of Kazakhstan, who entered the US on a J-1 visa on May 22, 2006. He adjusted status to conditional permanent resident on March 8, 2010, based on his marriage, to Nataliya Kovalska, a US citizen. On December 13, 2011 he Ms. Kovalska jointly filed Form I-751 petition to lift the condition on his permanent residence, as required by 8 U.S.C. § 1186a(c). They were interviewed in connection with this petition in 2013, and the I-751 then stayed pending for another eleven years, during which time they got divorced (in April 2015).

21. Meanwhile, Petitioner was arrested in New Jersey on August 3, 2011, and charged with criminal possession of stolen property. He pleaded guilty on February 10, 2012, to Receiving Stolen Property in the Third Degree, in violation of New Jersey Criminal Statutes 2C:20-7, and was sentenced to two years' probation.

22. On October 24, 2018, Petitioner pleaded guilty in the U.S. District Court for the Eastern District of Pennsylvania (Case 2:15-cr-0044) to a violation of 18 U.S.C. § 371, namely, exporting defense items without a license in violation of 22 U.S.C. § 2778. Mr. Perevoznikov was alleged to have purchased night vision and thermal imaging devices,

which can have military use but are also used for hunting, and which are among the hundreds of items which appear on the US Munitions List at 22 C.F.R. § 121.1, and then sent them to Russia without first obtaining a license. On August 31, 2021, he was sentenced to 48 months imprisonment and three years supervision.

23. On June 28, 2021, Petitioner pleaded guilty in the US District Court for the Eastern District of New York (Case 1:20-cr-00415) to a violation of 18 USC § 371, namely, conspiracy to export information, smuggle electronic devices, and defraud the United States, in violation of 13 U.S.C. § 305 (failure to file export information), 15 C.F.R. § 30 (requirements for filing electronic export information), and 18 U.S.C. § 554 (exporting or sending goods from the US contrary to any law of the United States). The devices in question were iPads, iPhones and MacBooks. On September 21, 2022, he was sentenced to imprisonment for eighteen months and 2 years of supervision upon release. This sentence ran concurrently with the August 2021 sentence.

24. Petitioner was discharged from federal prison on or about August 22, 2024, and immediately taken into ICE custody, where he remains. ICE have refused to release or parole Petitioner from custody, and instead told him that he will be detained for the duration of his removal proceedings.

25. On exactly the same date that he was taken into ICE custody, USCIS issued a decision denying Petitioner's I-751, thirteen years after it had been filed, and purporting to terminate his permanent residence. That decision referenced a different case number than that assigned to Petitioner's I-751, stated that it was filed by Petitioner on his own, in 2015, after he had been divorced, instead of jointly filed in 2011 while he was still

married. The decision acknowledged that Petitioner and his wife had demonstrated that theirs was a good-faith marriage, but then stated that because it was not jointly filed, it was denied as a matter of discretion on account of Respondent's criminal convictions. However, as it was a jointly-filed petition, USCIS lacked authority to deny it as a matter of discretion, 8 U.S.C. § 1186a(c)(3)(B). And USCIS own documents, obtained from a Freedom of Information Act (FOIA) request, state that the I-751 had been approved back in 2018.

26. One day later, on August 23, 2024, Respondent was placed into removal proceedings by the issuance of a Notice to Appear (O'Dwyer Declaration, Exhibit A).

27. On September 26, 2024 the Department of Homeland Security (DHS) filed superseding charges of removability, alleging that Mr. Perevoznikov is deportable under four separate statutory provisions of the INA (O'Dwyer Declaration, Exhibit B). First, under 8 U.S.C. § 1227(a)(1)(D)(i) because of the termination of his conditional permanent residence, Second, under 8 U.S.C. § 1227(a)(2)(A)(i) (conviction of a CIMT committed within five years of admission for which a sentence of one year or more can be imposed). Third, under 8 U.S.C. § 1227(a)(2)(A)(ii) (conviction of two or more CIMTs at any time after admission). Fourth, under 8 U.S.C. § 1227(a)(4)(A)(i) (engaged in conspiracy to fail to file export information, smuggle electronic devices, and defraud the United States relating to the international transportation of electronic devices from the United States to a foreign country).

28. On December 30, 2024, Petitioner filed a motion for a bond hearing,[1] arguing that he was not subject to mandatory detention under 8 U.S.C. § 1186(c), (O'Dwyer Declaration, Exhibit C), along with evidence relevant to Petitioner's equities.[2] In support of this motion, Petitioner argued that he was not subject to mandatory detention under § 1186(c), because his shoplifting arrest and conviction had occurred more than five years after his admission in May 2006, and neither his shoplifting conviction nor his October 2018 conviction for violating 22 U.S.C. § 2778 were crimes involving moral turpitude, and so he had not been convicted of two or more such crimes at any time after admission. He also argued he was not subject to mandatory detention under 8 C.F.R. § 1003.19(h)(2)(i)(C), because that regulation conflicted with the INA, which only made people who were subject to 8 U.S.C. § 1227(a)(4)(B) ineligible for bond, and as he was alleged to be a person described in 8 U.S.C. § 1227(a)(4)(A), he was statutorily eligible for bond.

29. On January 13, 2025, DHS filed a "Notice of Bond Ineligibility" (O'Dwyer Declaration, Exhibit D), asserting that Petitioner was not eligible for a bond hearing under three separate provisions of the INA and an Immigration Court regulation. First, under 8 U.S.C. § 1226(c)(1)(B), because he was deportable for having been convicted of two crimes involving moral turpitude not arising out of a single scheme of misconduct. Second, under 8 U.S.C. § 1226(c)(1)(C), because he was deportable for having been convicted of a crime involving moral turpitude within five years of admission for which a sentence of

[1] Petitioner had earlier requested a bond hearing, through prior counsel, but it was denied without prejudice to briefing as to eligibility.

one year or longer could be imposed. Third, under 8 C.F.R. § 1003.19(h)(2)(i)(C) because he was a person described in 8 U.S.C. § 1227(a)(4) as he had engaged in "any activity… to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information".[3]

30. The IJ then requested supplemental briefing on the issue, which both sides provided. (O'Dwyer Declaration, Exhibits E, F)

31. A brief hearing was held on January 23, 2025, at the conclusion of which the IJ stated, in sum and substance, that she was bound to follow the language of the regulation in question (8 C.F.R. § 1003.19(h)(2)(i)(C)), even if it conflicted with the statute. She then issued an order stating that Petitioner was "statutorily ineligible for IJ custody redetermination". (O'Dwyer Declaration, Exhibit G).[4]

32. In a written decision issued six weeks later, on March 6, 2025 (O'Dwyer Declaration, Exhibit H), the IJ found that Petitioner came within the scope of 8 U.S.C. 1227(a)(4)(A)(ii), and acknowledged his argument, that the regulation at 8 C.F.R. § 1003.19(h)(2)(i)(C) is ultra vires because the INA at 8 U.S.C. § 1226(c)(1)(D) specifies that only a noncitizen deportable under INA § 1227(a)(4)(B) is subject to mandatory detention and that it is thus not lawful to deny bond hearings to those, like him, who fall under other subsections of U.S.C. § 1227(a)(4) (p. 3).. Nonetheless, she found that "This

---

[2] This evidence is lengthy (over almost 250 pages) and not relevant to the legal issue presented here, and accordingly is not filed as an Exhibit. Counsel is willing to provide it, subject to redaction, if requested.

[3] As with Petitioner's evidence, this evidence from DHS is also very lengthy and not directly relevant to the issue presented in this habeas petition (Petitioner does not dispute his convictions), and so is not filed as an Exhibit here. Counsel is willing to provide it, subject to redaction, if requested.

[4] Petitioner also filed an application for asylum as relief from removal, and a hearing on that case is scheduled for June.

Court, however, lacks the authority to determine the legality of regulations" and that "Whatever the merit of the respondent's ultra vires argument, then, this Court is bound to follow the regulation at 8 C.F.R. § 1003.19(h)(2)(i)(C) as written." (*id*).

33. The IJ did not reach any of the other arguments relating to Petitioner's eligibility for bond.

34. A Notice of Appeal of this decision was timely filed with the Board of Immigration Appeals (BIA), but that appeal is futile, because precedential BIA decisions require it to follow its own regulations even where they conflict with a statute, or the US Constitution. *Matter of Anselmo*, 20 I. & N. Dec. 25, 30 (BIA 1989). Further, a decision on that bond appeal will likely take many months, exceeding the time for completion of Petitioner's underlying removal hearing.

AS AND FOR A FIRST CAUSE OF ACTION

35. The allegations contained in Paragraphs 1 through 34 above are repeated and re-alleged as though fully set forth herein.

36. The IJ's decision, that the regulation at 8 C.F.R. § 1003.19(h)(2)(i)(C) rendered Petitioner statutorily ineligible for a bond hearing, violates the INA. A regulation cannot make someone statutorily ineligible for a bond hearing when the statute itself states that the person is statutorily eligible.

37. The INA at 8 U.S.C. § 1226(c)(1)(A) – (E) renders five discrete classes of non-citizens ineligible for release on a bond while their removal proceedings are pending (subject to a number of exceptions at 8 U.S.C. § 1226(c)(2), none of which are relevant here). The fourth class, at 8 U.S.C. § 1226(c)(1)(D), subjects to mandatory detention non-citizens who are deportable under 8 U.S.C. § 1227(a)(4)(B) (terrorism), but not (a)(4)(A).

38. No-where does the statute delegate to an agency, be it DHS or the Department of Justice or the Executive Office for Immigration Review (the sub-agency within the Department of Justice where the Immigration Court and Board of Immigration Appeals are housed), the authority to make additional classes of non-citizens subject to mandatory detention.

39. Nonetheless, the regulation at 8 C.F.R. § 1003.19(h)(2)(i)(C) does exactly that, by rendering ineligible for bond anyone deportable under 8 U.S.C. § 1227(a)(4)(A) or (B), thus requiring mandatory detention for a wider set of people than those specified in the INA. In fact, this regulation requires mandatory detention for a set of non-citizens who Congress plainly intended to exclude from the mandatory detention statute. Congress could also have included in 8 U.S.C. § 1226(c)(1)(D) non-citizens who are deportable under any part of 8 U.S.C. § 1227(a)(4), whether (A) or (B), but it did not. Instead, it limited it to people deportable under 8 U.S.C. § 1227(a)(4)(B), thus leaving non-citizens who are deportable under 8 U.S.C. § 1227(a)(4)(A) eligible for a bond hearing.

40. Because the regulation is manifestly contrary to the statute, it is ultra vires and invalid. 8 U.S.C. § 1226(c)(1)(D) does not preclude Petitioner from bond eligibility.

PRAYER FOR RELIEF

Wherefore, Petitioner prays that this court:

A. Enter a declaratory judgment that 8 C.F.R. § 1003.19(h)(2)(i)(C) is ultra vires and invalid to the extent it precludes from bond eligibility non-citizens who are deportable under 8 U.S.C. § 1227(a)(4)(A);

B. Order Petitioner's immediate release from Respondents' custody, or in the alternative, direct Respondents to provide him with a bond hearing within fifteen

days; and

C. Award Petitioner costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

D. Grant any other and further relief that this court may deem necessary and proper.

Dated: New York, New York,
March 5, 2025

/s/ Carl Hurvitch
Brooks Law Firm
10 High Street, Suite 3
Medford, MA 02155
carl@brookslawfirm.com
(508) 462-9858

/s/ Paul O'Dwyer
Paul O'Dwyer
Attorney for Petitioner *pro hac vice*
11 Broadway, Suite 715
New York NY 10004
paul.odwyer@paulodwyerlaw.com
(646) 230-7444

VERIFICATION

I, the undersigned attorney, hereby state that I am Petitioner's attorney, and am seeking admission to this Court pro hac vice for purposes of this case. I have reviewed the record in this matter, and represented Petitioner in the bond proceedings before the Immigration Court. Based on personal knowledge and information and belief, all of the statements made in this Petition are true, except where stated to be on information and belief, and as to those statements I believe them to be true.

Dated: New York, New York
March 9, 2025

/s/ Paul O'Dwyer
Paul O'Dwyer
Attorney for Petitioner pro hac vice
11 Broadway, Suite 715
New York NY 10004
(646) 230-7444