District Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Rachad TAHA, et al.,

Petitioner,

v.

Drew BOSTOCK, et al.,

Respondents.

Case No. 2:25-cv-00649-RSM

MOTION TO RECONSIDER ORDER DENYING MOTION FOR A TEMPORARY RESTRAINING ORDER

Note on Motions Calendar:
April 23, 2025

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INTRODUCTION

Petitioner Rachad Taha (Mr. Taha or Petitioner) respectfully requests that the Court reconsider its order denying his motion for a temporary restraining order. The Court's order was based on the conclusion that there was no irreparable harm because it "begs the constitutional questions presented" and thus the harm of his detention "would apply equally well to all aliens and all cases." Dkt. 14 at 5.

Respectfully, the Court should reconsider its decision because the likelihood of success on the merits "is a threshold inquiry and is the most important factor" when assessing a TRO motion. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citation omitted). Here, Respondents do not dispute the key facts demonstrating Mr. Taha's prima facie eligibility for Temporary Protected Status (TPS)—that he is from Lebanon, that he has resided in the United States since that country was designated from TPS, that he has no criminal history, and that he applied for TPS during the required registration period. By statute, individuals who are prima facie eligible for TPS cannot be removed, irrespective of whether DHS obtains a travel document for them. As such, Mr. Taha's removal is not foreseeable, and his continued detention is unlawful. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91, 700–01 (2001). Indeed, his removal is even *less* reasonably foreseeable than it was when he was first released in January 2024. It is precisely because he has established a strong likelihood of success on the merits (demonstrating that his detention is unlawful) that the harm he suffers does *not* "apply equally well to all aliens and all cases." Dkt. 14 at 5.[1]

[1] Mr. Taha's counsel appreciates that a temporary restraining order is an extraordinary remedy. Undersigned counsel regularly file petitions for writs of habeas corpus in this Court without moving for a TRO, including in challenges to prolonged detention. This case, however, warrants the Court's expeditious intervention because of the plainly unlawful nature of detention at issue.

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The Court's decision effectively forces Mr. Taha to remained detained for the next several months (while this habeas petition is litigated) regardless of how unlawful his current detention is. Habeas, however, is designed to be a "swift and imperative remedy in all cases of illegal restraint or confinement," underscoring the need for relief now. *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

ARGUMENT

I. Standard of Review

This Court disfavors motions to reconsider. L. Civ. R. 7(h). Such motions are, however, appropriate where a party shows a "manifest error of law." *Chung v. Washington Interscholastic Activities Ass'n*, 550 F. Supp. 3d 920, 924 (W.D. Wash. 2021).

II. Ninth Circuit Precedent Demonstrates the Court Must Address the Merits, which Show Mr. Taha Is Prima Facie Eligible for TPS and Cannot Be Removed.

The central facts regarding Mr. Taha's current status in detention are undisputed. Respondents do not dispute that they currently do not have a travel document for Mr. Taha. *See* Dkt. 3-10 (Notice of Revocation of Release); *see also generally* Andron Decl., Dkt. 13 ¶¶ 19–22. More importantly, even if they were to obtain a travel document, Mr. Taha cannot be removed because he is prima facie eligible for TPS. Respondents do not dispute that Mr. Taha is a national of Lebanon, a TPS-designated country. *See* Dkt. 3-1 (DHS Sworn Statement); Taha Decl., Dkt. 4 ¶ 2; Andron Decl. ¶ 4 ("Petitioner is a native and citizen of Lebanon"). They also do not dispute that he has resided in the United States during the period of required physical presence for purposes of TPS. *See* Dkt. 3-1 (DHS Sworn Statement) (showing Mr. Taha entered the United States in July 2023); Taha Decl., Dkt. 4 ¶ 5 (testimony regarding entry); Andron Decl. ¶ 4 ([O]n or about July 16, 2023, [Petitioner] . . . enter[ed] the United States without inspection."). Nor do they dispute that Mr. Taha has had his fingerprints taken and that he has no

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criminal history.[2] *See* Dkt. 3-7 (FBI criminal history, showing only an immigration arrest in Panama); Taha Decl., Dkt. 4 ¶ 36 (testimony regarding taking of fingerprints); Stopher Decl., Dkt. 5 ¶¶ 3, 10 (explaining how ICE is obligated to facilitate biometrics for detained persons and how ICE has taken Mr. Taha's fingerprints). Finally, Respondents do not dispute that he filed a timely application for TPS during the registration period.[3] Dkt. 3-8 (TPS application receipt notice).

This is *all that is required* to be prima facie eligible for TPS. *See* 8 U.S.C. § 1254a(4)(B), (c). And Respondents do not dispute that prima facie eligibility prevents a person's removal. That should end this case, as it leaves no doubt that Mr. Taha cannot be removed under the plain text of the TPS statute. *See id.* § 1254a(a)(4)(1)(A) (describing TPS's benefits, including the prohibition on removal); (4)(B) (extending TPS benefits to prima facie eligible applicants); *see also Salad v. Department of Corrections*, --- F. Supp. 3d ---, 3:25-cv-00029-TMB-KFR, 2025 WL 732305 (D. Alaska Mar. 7, 2025) ("[T]he INA prohibits removal of an individual who is

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[2] Mr. Taha's declaration and that of his attorney describe how ICE took his biometrics and how ICE is the party responsible for doing so because he is detained. Taha Decl., Dkt. 4 ¶ 36; Stopher Decl., Dkt. 5 ¶¶ 3, 10. Respondents misleadingly place the blame on Mr. Taha for missing a U.S. Citizenship and Immigration Services (USCIS) biometrics appointment for his TPS application, but he missed that appointment *because Respondents detained him*. Dkt. 12 at 3, 8. Respondents were legally obligated to then take his biometrics, and they did so prior to Mr. Taha's filing of his motion—which Respondents do not dispute. *See* USCIS Policy Manual vol. 1, pt. C, ch. 2, § B ("Immigration and Customs Enforcement, Enforcement and Removal Operations is responsible for completing background and security checks for those who are incarcerated at DHS facilities and applying for benefits with USCIS.").

[3] The parties do dispute whether Mr. Taha fully complied with his terms of release. But even Respondents acknowledge that where Mr. Taha briefly missed the window for the frequent check-ins he was required to conduct, he subsequently checked-in when prompted. *See, e.g.*, Andron Decl., Dkt. 13 ¶¶ 13–14. He also was sure to inform those monitoring his release when he moved and to seek permission before doing so, which Respondents do not dispute. Taha Decl., Dkt. 4 ¶¶ 11–13, 18. Such actions are not those of someone trying to escape or who serially violates the terms of their release.

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prima facie eligible for TPS.").

The Court found there was no irreparable harm because the irreparable harm was intertwined with the merits. Dkt. 14 at 5. But the merits "is a threshold inquiry and is the most important factor" when assessing a TRO motion. *Baird*, 81 F.4th at 1040 (citation omitted); *see also Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020) (same); *California by and through Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc) (similar).[4] "As a general matter, district courts *must* consider all four . . . factors." *Baird*, 81 F.4th at 1040 (citation omitted). Moreover, in *Baird*, the Ninth Circuit explained that "[i]t is well-established that the first factor is especially important when a plaintiff alleges a constitutional violation and injury." *Id.* This is because "[i]f a plaintiff in such a case shows he is likely to prevail on the merits, that showing usually demonstrates he is suffering irreparable harm no matter how brief the violation." *Id.* Moreover, the movant's "likelihood of succeeding on the merits also tips the public interest sharply in his favor because it is 'always in the public interest to prevent the violation of a party's constitutional rights.'" *Id.* (quoting *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022)).

Further, a moving party establishes irreparable harm where they can show they are "needlessly detained." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (affirming grant of preliminary injunction), *abrogated on other grounds sub nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018). This principle is well-established and recognized by other judges in this district. *See Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (recognizing that a "loss of liberty" is irreparable); *Doe v. Noem*, --- F. Supp. 3d --- No. 2:25-

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[4] *Baird* concerned a motion for a preliminary injection, but that inquiry and the one for temporary restraining orders are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

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CV-00633-DGE, 2025 WL 1141279, at *7 (W.D. Wash. Apr. 17, 2025) (recognizing that the prospect of being placed in removal proceedings and detention was irreparable harm, among other harms).

Finally, if the Court denies Petitioner's request for reconsideration, he respectfully requests the Court issue an order to show cause, and in light of the liberty interests at stake, require Respondent's return within seven days, and Petitioner's response to the return within another seven days. Habeas is designed to be an expeditious remedy, and the statute itself states that an "order to show cause . . . . shall be returned with three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243. This allows the court to "summarily hear and determine the facts," *id.*, because habeas petitions are designed to be a "swift and imperative remedy in all cases of illegal restraint or confinement." *Yong*, 208 F.3d at 1120; *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.").

CONCLUSION

For the foregoing reasons, the Court should grant the motion to reconsider and order Mr. Taha's release.

Respectfully submitted this 23rd of April, 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 1,638 words, in compliance with the Local Civil Rules.

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