UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

OKECHUKWU DESMOND AMADI

V

Case No. 4:25-CV-172-CDL-AGH

WARDEN DICKERSON

MEMORANDUM IN OPPOSITION TO RESPONDENT'S RESPONSE

COMES NOW, Petitioner, Okechukwu Desmond Amadi, responding in opposition to Respondent's response to Petitioner's initial brief.

FACTS RELEVANT TO THIS MEMORANDUM

1. Upon release from the BOP (Bureau Of Prison) on his release date of 5/02/2025, Petitioner was transfered to Cary, North Carolina upon his arrest pursuant to the NTA (Notice to appear). Petitioner was interviewed by a gentleman by the name of Saha at the Immigration Office in Cary, North Carolina. During the interview, Petitioner made it clear to Mr. Saha that he had a pending appeal of the Criminal conviction, the subject of the removal proceedings. When asked to show proof, Petitioner presented the proof. The agent

Mr Saha, told Petitioner That he "would have to take it up with the Judge". Petitioner was then Subsequently transfered from Alamance County Detention Facility in North Carolina where he was held for two days before he was transfered to Stewart detention facility in Lumpkin, Georgia. While in Immigration Custody at Stewart detention facility, Petitioner was assigned a deportation Officer by the name of Graumentz. Petitioner sent a letter requesting a bond hearing. Those messages were left unanswered. Petitioner, then wrote a letter to the Judge requesting that the Judge grant him a bond as his appeal ~~is~~ currently pending in the 11th Circuit Court of Appeal. A bond hearing was held on the basis of the letter sent to the Judge on May 21, 2025. At the bond hearing the DHS attorney stated that the Immigration Judge had no jurisdiction to hear the case, specifically stating that Petitioner was classified as an "arriving alien" on the NTA (Notice to appear). The Judge told Petitioner that he was scheduled to appear in front of her On the 5th of June 2025. At about 2 a.m

On the 5th of June, Petitioner was awoken by the Captain of Stewart detention Center and told to pack his belongings as he was being moved. Petitioner notified the Captain that he had a bond hearing that morning and that he would need to talk to his attorney. Petitioner was escorted to an intake holding cell around 4:30 am in the morning on the 5th of June where he was kept until 11:30 am when the bus that took him to the airport departed. Respondent stated "Petitioner was scheduled to appear on June 5, 2025, for both his bond hearing and his initial master hearing". Respondent continues "Petitioner was not produced". The summary above is the reason why Petitioner was not produced. Petitioner is currently still in Immigration custody while his appeal is pending in the 11th Circuit Court of appeal. Petitioner is at the Imperial detention facility where the legal resources are less than ideal for a person currently on appeal given that it is an Immigration facility. The DHS introduced into evidence as part of the Judgement and Commitment papers that states "The defendant pleaded guilty to Counts

One, Two and Three of the Indictment" (See Exhibit C of Respondent's response. This is not the case

ARGUMENTS

1. Respondent contends that Petitioner's petition should be denied as the Court "lacks subject matter jurisdiction over his constitutional claims." Respondent continues stating that the "Court lacks subject matter jurisdiction to judicially review legal and factual determinations in removal proceedings."

The Judiciary plays a vital role in ensuring that constitutional rights are protected. This is particularly important where, as here, agency officials are engaging in arbitrary actions that infringe upon an individual's rights. The Government is clearly bent on detaining Petitioner and has no compelling reason to continue to detain petitioner. This kind of arbitrary agency action underscores the need for judicial oversight to exercise their independent judgement in deciding whether an agency has acted within its statutory authority in accordance with the law. The Judicial practice dating back to Marbury have held that Courts, not agencies, are vested with Article III power to decide legal questions by applying their own judgement.

A federal Judge sits in equity to decide cases or controversy where a Petitioner can establish an injury in fact or imminent threat of one that is redressable by a Court ruling or an order by the Judge. Judge's therefore sit in equity to resolve cases. As a corollary to this, is that Judges examine all the facts and circumstances surrounding the issues and then rules in accordance with the applicable law/Statute. In otherwords, the Judge is called upon to examine the facts, circumstances and apply the appropriate Legal framework in lieu of making a determinatio based on the relief sought. To hold otherwise, would be to go against the Constitution. The Supreme Court embraced the Framers' understanding of the judicial function early on. In the foundat-ional decision of Marbury v. Madison, Chief Justice Marshall famously declared that "it is emphatically the province and duty of the judicial department to say what the law is." 5 U.S. 137, 1 Cranch 137, 177, 2 L. Ed. 60 (1803). And in the following decades, the Court understood "inter-preting the laws, in the last resort," to be a "solemn duty" of the Judiciary. United States v. Dickson, 40 U.S. 141, 15 Pet. 141, 162, 10 L.Ed. 689

(1841) (Story, J., for the Court). When the meaning of a statute was at issue, the judicial role was to "interpret the act of Congress, in order to ascertain the rights of the parties" Decatur v. Paulding, 39 U.S. 497, 14 Pet. 497, 14 Pet. 497, 515, 10 L.Ed. 559 (1840). Of recent, the Supreme Court emphasized in Loper Bright Enterprises v. Raimondo 144 S. Ct. 2244; 219 L.Ed. 2d 832; (2024) "Courts have a duty to scrutinize agency actions and ensure that they comply with the law." By reviewing agency actions and ensuring that they are not arbitrary and capricious, the Courts can safeguard the constitutional rights of individuals and prevent abuses of discretion.

Congress in 1946 enacted the APA (Administrative Procedure Act) "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." Morton Salt, 338 U.S. As relevant here the APA specifies that Courts, not agencies, will decide "all relevant questions of law" arising on review of agency action, 5 U.S.C. § 706 (emphasis added) even those involving ambiguous laws. It describes no deferential standard nor does it prescribe any standard for Courts to employ in answering those legal questions. Courts exercising independent judgement in determining the meaning of Statutory provisions, Consistent with the APA, may-as they have from the start-seek aid from the intepretations of those responsible for implementing particular Statutes. See Skidmore, 323 U.S., at 149 65 S. Ct. 161, 89 L. Ed 124. And when the best reading of a Statute is that it delegates discretionary authority to an agency, the role of the reviewing Court under the APA is, as always, to independently interpret the Statute and effectuate the will of Congress subject to Constitutional limits. The Court fulfills that role by recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in "reasoned decision making" within those boundaries. Michigan v. EPA, 576 U.S. 743, 750, 135 S. Ct. 2699, 192 L. Ed. 2d 674 (quoting Allen Mack Sales & Service, Inc. v. NLRB, 522 U.S. 359, 374, 118 S. Ct 818, 139 L. Ed. 2d 797). By doing so, a court upholds the traditional conception of the judicial function that the APA adopts.

Article III of the United States Constitution vests federal Courts with the power to decide "cases" and "controversies". Petitioner has demonstrated that he has suffered a concrete and particularized injury that is legally cognizable by this Court, caused as a result of the actions of the DHS. The Supreme Court has stressed that the alleged injury must also "be legally and judicially cognizable". Rarnes v. Byrd 521 U.S. 811, 819, 117 S. Ct. 2312, 138 L. Ed. 2d 849. Petitioner, therefore has established a "traceable link" between his actual injuries and ongoing injuries due to the actions of the Government. To establish standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a Court order. See Lujuan, 504 U.S, at 560-561, 112 S. Ct. 2130, 119 L. Ed. 2d 351. The Supreme Court has held that typically a person has standing to contest policies of the prosecuting authority when he himself has been prosecuted or is threatened with prosecution. See Linda. R. S. V. Richard D., 410 U.S. 614, 93 S. Ct. 1146, 35 L. Ed. 2d 536

(1973). When the Executive branch elects to arrest, detain and prosecute, as is the case here, it has exercised coercive power over an individuals liberty and property interest, and thus it has infringed upon interests that Courts often are called upon to protect. See Lujuan, 504 U.S., at 561-562, 112 S.Ct. 2130, 119 L.Ed.2d. 351

2. Respondent in an attempt to classify Petitioner as an "arriving alien" as the basis for continued detention, ultimately relies on this Statute 8 U.S.C. § 1101 (a) (13) (C) (v).

A common sense reading of the text of 8 U.S.C § 1101 (a) (13) (C) (v) especially combined with the Legislative history make clear that the DHS is required to consider each factor in its exercise of its authority under Immigration law. Specifically the INA explicitly provides that an LPR "shall not be regarded as seeking an admission into the United States" except in certain enumerated circumstances, 8 U.S.C § 1101 (a) (13) (c) (emphasis added) - including when the alien "has committed" id. § 1101 (a) (13) (c) (v) a "crime involving moral turpitude," id § 1182 (a)(2)(A)(i)(I). In addition The INA does not provide that an LPR may be treated as seeking admission when he has been "charged with a crime" or is "believed to have committed a crime," it permits such treatment only when an LPR "has committed" a crime Id. § 1101(a)(13)(C)(v). And because "DHS bears the burden of proven by clear and convincing evidence that a returning (LPR) is to be regarded as seeking an admission" Rivens., 25. I. & N. Dec. at 625, we do not see how charging documents alone - without more - could carry DHS's burden of demonstrating that a crime had been committed at the time of an LPR's entry. See United States v. Salerno, 829 F.2d 345, 346 (2d Cir 1987) (Newman, J., concurring) (acknowledging that the clear-and-convincing evidence standard is higher than that of probable cause

Additionally 8 U.S.C § 1182(a)(2)(A)(i)(I), provides that an alien is "ineligible to be admitted to the United States" if he has been "convicted of.... a crime involving moral turpitude." The same Court respondent relies on for its arguments, the 11th Circuit has in a precedent-setting ruling categorically stated that "a violation of 18 U.S.C.S § 1956(a)(1)(B) is not categorically a crime of moral turpitude for Immigration purposes." In United States vs Lisette Lopez 75 F.4th (11th Cir 2023), the Chief Judge William Pryor, in his ruling went further to state "conspiring to launder money offense, 18 U.S.C.S § 1956(h) did not categorically invoke moral turpitude." (See Petitioner's original brief Page 9 and 10). Undettered, Respondent argues that Petitioner failed to exhaust administrative remedies. Petitioner filed a request for release with the Warden of Stewart County detention Center, Mr Dickerson, on 5/19/2025 (See exhibit C of original brief). Petitioner handed the request for release to Warden Dickerson on 5/20/2025 during an inspection walk-through at about 12:00pm. The Warden's response was that "he could not release me but I (the Warden) will forward ~~the~~ the request to the Atlanta field Office". At a subsequent encounter where Petitione inquired into whether he had sent the request to the Atlanta field Office. The Warden responded in the affirmative, "Yes". On 5/21/2025, Petitioner was presented with a notice of custody re-determination hearing pursuant to a request for release/bond filed in the form of a letter written to Judge Kelley Syndor, specifically explaining the fact that Petitioner currently has an appeal pending of the underlying criminal conviction in the 11th Circuit Court of appeal. Based on the actions of the DHS, its reasonable to believe that the DHS has no intention of releasing Petitioner, therefore any further administrative remedies to the extent they exist would be futile. Besides, Petitioner's argument is that there is no basis in law to have arrested and detained Petitioner ab initio and therefore the arrest and his continued detention violates his constitutional rights and his right to be free from the coercive power of the Government especially given that there exists no basis in law or reason for Petitioner's continued detention.

CONCLUSION

Petitioner respectfully submits that the actions of the DHS/officials were unlawful. Petitioner is confident that this Court will recognize the unlawful actions and grant the relief necessary to vindicate Petitioner's rights.

Respectfully submitted,

Okechukwu Desmond Amadi

7-09-2025