District Judge Stanley A. Bastian

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHEVCHUK, SERGEY MIKHAYLOVICH, Petitioner, v. BRUCE SCOTT,[1] *et al.*, Respondents.	Case No. 2:26-cv-01872-SAB FEDERAL RESPONDENT'S RETURN MEMORANDUM

I. INTRODUCTION

This Court should deny Petitioner Sergey Mikhaylovich Shevchuk's Second Petition for a Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges his continued post-order detention at the Northwest ICE Processing Center ("NWIPC").

This is Petitioner's second habeas petition arising from the same detention. In his prior action, this Court granted relief by ordering an individualized bond hearing at which the Government bore the burden of establishing that Petitioner posed a danger to the community or a flight risk. Petitioner received precisely that process. Following a full evidentiary hearing, the

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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Petitioner has failed to exhaust available administrative remedies, seeks review of matters beyond the scope of habeas jurisdiction, and cannot establish any constitutional violation warranting release, the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Legal Background

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526-29 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

Section 1226(a) "authorizes the Attorney General to arrest and detain noncitizen 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 138 S. Ct. 830, 847 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of [noncitizens] during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed.'" *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Every noncitizen apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). "Federal regulations provide that [noncitizens] detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). An ICE officer initially assesses whether the noncitizen has "demonstrate[d]" that "release would not pose

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The Petitioner applied for an immigration benefit with USCIS on or around October 16, 2020. *Id.* ¶ 6. USCIS denied the Petitioner's application on or around September 25, 2023. *Id.* The Petitioner was convicted in the Spokane Municipal Court on or around February 4, 2002, for use of drug paraphernalia and sentenced to 90 days with 77 days suspended. *Id.* ¶ 7. On June 17, 2004, the Spokane Municipal Court convicted the Petitioner of Obstructing a Law Enforcement Officer and sentenced him to 365 days jail with 353 days suspended. *Id.* ¶ 8.

On May 07, 2004, the Spokane County Superior Court convicted Petitioner of Resisting Arrest and sentenced him to 22 days. *Id.* ¶ 9. On March 01, 2007, the Spokane County District Court convicted Petitioner of driving under the influence and sentenced him to 365 days with 363 suspended. *Id.* ¶ 10. On March 12, 2009, the Lynnwood Municipal Court convicted Petitioner of ignition interlock violation and sentenced him to 90 days with 85 suspended. *Id.* ¶ 11. On June 19, 2014, the Spokane County District Court convicted Petitioner of driving under the influence and sentenced him to 364 days with 270 days suspended. *Id.* ¶ 12.

On June 24, 2014, the Spokane Municipal Court convicted Petitioner of driving under the influence and hit and run-attended property. *Id.* ¶ 13. On January 29, 2016, the Olympia Municipal Court convicted Petitioner of driving under the influence, ignition interlock violation, and driving with license suspended and sentenced him to 364 days with 364 days suspended. *Id.* ¶ 14. On January 28, 2025, the Spokane County District Court convicted Petitioner of Driving while License Suspended and sentenced him to 364 days with 90 days electronic home monitoring. *Id.* ¶ 15.

On or around March 19, 2026, ERO became aware that Petitioner had disclosed to USCIS while applying for an immigration benefit that he was previously addicted to methamphetamine. *Id.* ¶ 16. On or around March 24, 2026, the Petitioner was detained by ERO

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and the deadline for appeal is June 26, 2026. *Id.* The Petitioner's next master hearing is scheduled for June 17, 2026. *Id.* ¶ 22.

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner has Failed to Exhaust his Administrative Remedies

This Court should require Petitioner to avail himself of the substantial procedural protections available to him before seeking habeas relief in a federal district court. Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)).

The district court's decision in *Aden v. Nielson*, No. 18-cv-1441, 2019 WL 5802013 (W.D. Wash. Nov. 7, 2019), is instructive as to why this Court should require Petitioner to exhaust his remedies concerning the immigration judge's bond order before the BIA. In *Aden*, the Court

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in nature, *i.e.*, whether Petitioner is a danger to the community and a flight risk. The second *Puga* factor also weighs in favor of exhaustion because there is no question that where it has jurisdiction, the immigration court has authority to deny bond if a person is deemed a flight risk or a danger to the community. Allowing a "relaxation of the exhaustion requirement" for Petitioner would permit other detainees to directly appeal their alternative bond determinations to federal district court without any further administrative appellate record. Last, the third *Puga* factor weighs in favor of exhaustion because the BIA is capable of reviewing evidentiary findings and could preclude the need for judicial review.

Petitioner's arguments that prudential exhaustion should be excused on the grounds that his administrative remedies are inadequate or ineffective, that irreparable injury will result, or that the administrative proceedings would be void, is without merit. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Once the BIA determines the outcome of her appeal, Federal Respondents and Petitioner will have created an appellate record for this Court to review in a subsequent habeas case. Furthermore, he may obtain the relief he seeks here through the BIA. The *Laing* factors do not favor excusing the prudential exhaustion requirements, which should be applied here.

Accordingly, the Petition should be dismissed because Petitioner has failed to exhaust his administrative remedies. Petitioner's deadline to appeal the IJ's decision is June 26, 2026. If the Petitioner appeals and the BIA dismisses Petitioner's appeal, he may then seek further review by this Court.

B. Petitioner has not identified any colorable constitutional or legal error arising from the bond hearing

An immigration judge's discretionary decision to deny bond is not subject to judicial review. 8 U.S.C. § 1226(e); *see also Romero-Torres v. Ashcroft*, 327 F.3d 887, 891–92 (9th Cir. 2003). Federal district courts retain habeas jurisdiction only to review bond determinations for

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C. Petitioner is not entitled to release.

This Court should deny Petitioner's request for immediate release from immigration detention. A noncitizen is entitled to release if he can show that his immigration detention is indefinite as defined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). While Petitioner's detention continues while his removal proceedings are ongoing, he cannot allege that his detention has become indefinite. Petitioner has presented no evidence that ICE will be unable to remove him if a removal order becomes final at some future date. Nor has Petitioner provided any legal basis for his immediate release from detention while detained pursuant to 8 U.S.C. § 1226(c).

As he is in ongoing removal proceedings, there is no doubt that Petitioner's continued detention is related to a legitimate government purpose. The Supreme Court has repeatedly recognized that detention is a constitutionally permissible aspect of the Government's enforcement of the immigration laws and fulfills the legitimate purpose of ensuring that individuals appear for their removal proceedings. *See Jennings*, 583 U.S. at 286; *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at 690-91. Consistent with the requirements of due process, Petitioner's confinement is thus "reasonably related" to a legitimate government interest and is constitutional while her removal proceedings are pending. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979). Accordingly, this Court should not grant Petitioner's request for immediate release.

D. Petitioner's detention comports with substantive due process.

This Court should not grant Petitioner's request for immediate release because he has not established that his detention is punitive and violates substantive due process. Petitioner's detention has become neither unreasonable nor punitive. As the Supreme Court has repeatedly recognized, detention is a constitutionally permissible aspect of the Government's enforcement

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appropriately to Petitioner's medical needs and has provided care that satisfies constitutional requirements.

Furthermore, Petitioner's detention is not punitive because it is reasonably related to legitimate governmental objectives. When evaluating the constitutionality of civil detention conditions under the Fifth Amendment, a district court must determine whether those conditions "amount to punishment of the detainee." *Bell*, 441 U.S. at 535. A petitioner may show punishment through an express intent to punish or a condition that is not "reasonably related to a legitimate governmental objective." *Id.*; *see also Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015) (noting that "a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose"). "A restriction is punitive where it is intended to punish, or where it is 'excessive in relation to [its] non-punitive purpose.'" *See Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004).

Petitioner presents no evidence that the medical treatment at the NWIPC constitutes an express intent to punish him. He falls well short of demonstrating that his confinement at NWIPC with the medical treatment available is so excessive that it evinces "an expressed intent to punish on the part of detention facility officials." *Bell*, 441 U.S. at 538.

IV. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that this Court deny the Petition.

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