NO: 20-11181-D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ROGERIO CHAVES SCOTTON,
(A203085029)
Petitioner,

V.

WILLIAM P. BARR,
United States Attorney General,
Respondent.

PETITIONER'S MOTION TO LEAVE TO AMEND HIS OBJECTION MOTION TO THE RESPODENT'S OPPOSITION RESPONSE AND TO SEEK AN ORDER FOR TEMPORARY OR PRELIMINARY INJUNCTION

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132 COTTON DRIVE
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ROGERIO CHAVES SCOTTON,
(A203085029)
Petitioner,

V.

WILLIAM P. BARR,
United States Attorney General,
Respondent.

On April 24, 2020, the Petitioner Rogerio Chaves Scotton ("SCOTTON"), filed his reply to the respondent opposing motion to the Petitioner's emergency amended motion to request his release from ICE custody.

Under said opposition motion, the respondent stated that the Petitioner suggested that the Court has jurisdiction to release him pursuant to § 1657 and suggested that such is a scrivener's error. This claim has no merit and only attempted to side-step Scotton's argument.

The Petitioner first judicial review was filed in this Court on November 25, 2019 and his second was filed on March 22, 2020. As the present days, the Court did not make any decision on the first petition nor, has made any decision on the second.

What the respondent suggested to be a scrivener error is the Petitioner request the Court to expedite his petitions to end this double incarceration he is now subjected. See *28 U.S.C. § 1657(a)*.

Furthermore, the respondent alleged that the Executive Brach is "rapidly and Carefully Addressing the Current Emergency ad It affects Irwin County Detention Center. This is also false. There are numerous other detainees hold here at Irwin County Detention Center without any legitime reason and was ordered removal more than six months. See, *In the matter of TYLER*

LAWRENCE. When the respondent wants to extradite or removal any individual from or to the United State, they do under of over the law. However, this typical ICE incarceration apparently to be convenient for the respondent as well as to private companies like Lasalle Corrections LLC.

Nonetheless, If the Georgia governor, has no baring to re-opened the state so individuals could get "TATOOS" "massages" "manicure and pedicure" playing "bowling alley", than DHS should have no baring to take the Petitioner to the airport and placed him on the next flight to Brazil.

The respondent further suggested as a remedy that the Petitioner could be transferred to another facility since numerous detainees at Irwin County Detention Center is contaminated with COVID-19. This statement is completely absurd and outrageous.

First, all facility around Atlanta metro has already reported individuals carried the COVID-19 virus. Among other local facilities reporting COVID-19 are, Folkston ICE detention Center and Stewart ICE Facility. Any attempt to transferring the Petitioner to another facility, as suggested by the respondent, is the same as to place him on Hitler gas chamber.

The petitioners clearly have a substantial interest in his release, for the interest in his release is "always substantial." *Hilton, 481 U.S. at 777-78*. And as in regards of the public interest, the Petitioner motion itself should be an indispensable mechanism for monitoring the separation of powers. The test for determining the scope of this provision must not be subject to manipulation by those whose power it is designed to restrain.

Here in this case, the respondent failed to address the claims submitted by the Petitioner which are currently at bar. Because the respondent failed to show irreparable harm, the respondent's belated invocation of the immigration laws is problematic given both the length of time that Petitioner have been denied his liberty and the length of time the Respondent was on notice of the need to make a sufficient evidentiary showing to traverse the petitions seeking relief. Under

immigration laws, even for a repeat felon not lawfully entitled to enter the United States, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Clark, 543 U.S. at 378 (quoting Zadvydas, 533 U.S. at 699)*. How much more of the Petitioner freedom should be taken unlawfully, he is not currently convicted, indeed no longer even accused of any criminal wrongdoing. Continue detention is a travesty of justice. It is fraud conduct by private corporations who has been given official license to slave alien immigrants and trading them for profit on Wall-Street.

Now, Combined with the government's failures so to address the Petitioner claims and, far to "ma[k]e a strong showing that [it] is likely to succeed on the merits," *Hilton, 481 U.S. at 776*, or that the public interest weighs in favor of continued unlawful imprisonment of the Petitioner at Irwin County Detention Center, its additional failure to present evidence of irreparable harm necessarily means that, the respondent has failed to meet its burden of proof in seeking a detention.

The Petitioner also mentioned 28 U.S.C. § 1657 so he could be allowing to seek temporary or preliminary injunctive relief.

The Petitioner deportation issue so far has been secured through numerous acts of misconduct and wrongfully assumption that he is an aggravated felon under 1101(a)(43)(M)(i) and this unconstitutional need to fulfill private prison on the taxpayers' expense.

In this case, the respondent has avoided to address the claims made by the Petitioner under his two judicial review motions, engage in an unconscionable plan to violate the law and pervert the course of justice.

Under *Hilton vs. Braunskill, 481 U.S. 770, 777, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)*, the presumption of release pending appeal of a habeas grant is subject to consideration by the appellate court of the four factors traditionally considered in deciding whether to grant a stay. Those four

factors also weigh against a stay here. First, as regards the likelihood of success on the merits, the respondent so far abandoned and completely ignored its theory that the Petitioner is an aggravated felon under the INA Act. And the respondent does not argue that it may indefinitely imprison a person at Irwin County Detention Center solely because it deems him "aggravated felony."

The Supreme Court has made clear that, in at least some instances, a habeas court can order an alien released with conditions into the country despite the wish of the Executive to detain him indefinitely. *Clark vs. Martinez, 543 U.S. 371, 386-87, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005)*; *Zadvydas vs. Davis, 533 U.S. 678, 695, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001)*. It is thus, both inadequate and untrue to assert that the political branches have "plenary powers over immigration," See *Zadvydas, 533 U.S. at 695 (purported "'plenary power' to create immigration law" is "subject to important constitutional limitations.")*. Even inadmissible aliens as the Petitioner cannot be held indefinitely under the normal immigration detention statute, and the Petitioners have been imprisoned for over eight years and over 90 days under ICE detention. *Clark, 543 U.S. at 386-87; Zadvydas, 533 U.S. at 689*. The Petitioner is entitled to release pending his petition and adjustment of status application.

Respectfully Submitted,

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PROOF OF SERVICE

I Rogerio Chaves Scotton, do certify that on this April 24, 2020, I have served the attached motion to reply to the respondent opposition response (which is under the Petitioner's constitutional rights) on the Eleventh Circuit in the above proceeding. I have served this motion via, United States Postal Service (USPS) priority mail through, Irwin County Detention Center legal mail.

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