

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AARON HOPE, et al.,

Plaintiffs-Petitioners,

v.

CLAIR DOLL, in his official capacity as  
Warden of York County Prison, et al.,

Defendants-Respondents.

Case No. 1:20-cv-00562

**Chief Judge John E. Jones III**

**PETITIONERS' EMERGENCY MOTION FOR A TEMPORARY  
RESTRAINING ORDER, OR ORDER PURSUANT TO THIS COURT'S  
INHERENT AUTHORITY, TO PREVENT PETITIONERS'  
RE-DETENTION FOR 14 DAYS**

Petitioners Rakibu Adam, Alexander Alvarenga, Brisio Balderas Dominguez, Eldon Bernard Briette, Viviana Ceballos, Edwin Luis Crisostomo Rodriguez, Jesus De La Pena,<sup>1</sup> Duckens Max Adler Francois, Nahom Gebretnisae, Aaron Hope, Jesus Angel Juarez Pantoja, Yelena Mukhina, Coswin Ricardo Murray, Wilders Paul, and

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<sup>1</sup> Petitioner De La Pena is included in this emergency motion, even though ICE has no lawful basis to re-detain him. In May 2020, the Board of Immigration Appeals (BIA) affirmed the Immigration Judge's grant of immigration relief. The government's motion for reconsideration does not stay the decision. *Compare* 8 CFR §§1003.2(f) (providing the process for motions to reconsider, no stay specification) with 8 CFR 1003.19(i)(2) (specifying automatic stay in certain cases involving bond).

Dembo Sannoh<sup>2</sup> hereby move this Court to enter an order under its inherent Article III authority and the All Writs Act, or pursuant to a Temporary Restraining Order under Federal Rule of Civil Procedure 65(b), that prohibits Respondents from re-detaining Petitioners for 14 days. Petitioners seek this protection because, under Fed. R. App. P. 41, the mandate should issue tomorrow, November 10, 2020, and Respondents have already denied undersigned counsel's repeated requests that, at the very least, they agree to not re-detain Petitioners until the parties confer with the Court on November 12. As such, Petitioners now seek this limited but critical relief, and in support thereof state as follows:

1. Seven months have elapsed since this Court's April 7 and April 10 injunctive orders directing the fifteen (15) Petitioners' release. ECF Nos. 11 and 22. Since their release, each Petitioner has worked diligently to comply with their conditions.<sup>3</sup> Those conditions include weekly check-ins with their attorneys and conditions set by ICE that include electronic monitoring and regular ICE check-ins.

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<sup>2</sup> Petitioners will move to dismiss the seven Petitioners for whom relief is not sought.

<sup>3</sup> Petitioners recognize one exception, Coswin Ricardo Murray, who, as the government and this Court are aware, had subsequent contact with the criminal legal system. On July 5, 2020, Petitioner Murray was charged with a summary offense for Harassment-Subject Other to Physical Contact in Luzerne County and, on September 3, 2020, he was charged in Worcester County, Maryland with (1) violating an out of state order, (2) second degree assault, and (3) Theft \$100 to under \$1500, and (4) false statement to peace officer. He was detained for five days in Maryland, extradited to Luzerne County, where he was detained for one

2. After Respondents' April appeal of this Court's injunction orders, the Third Circuit on August 25 vacated those orders and remanded the matter for "further proceedings consistent with this opinion." *Hope v. Warden York Cty. Prison*, 972 F.3d 310, 334 (3d Cir. 2020). The Court denied Petitioners' Petition for Rehearing and/or Rehearing En Banc on November 3, 2020, which means the mandate should issue tomorrow, Tuesday, November 10, 2020. Fed. R. App. P. 41.

3. On Wednesday, November 4, 2020, Petitioners' counsel communicated by email with Respondents' counsel to notify them that they would be (1) seeking a status conference with the Court, and (2) asked that, in anticipation of the status conference, Respondents clarify whether they share Petitioners' position that no individual petitioner should be re-detained without notice and an opportunity to be heard before this Court. Ex. 1. This Court granted Petitioners' request, ECF No. 28, scheduling a status conference for November 12 at 2:30 p.m. ECF No. 29.

4. Having received no response from Respondents' counsel, Petitioners' counsel sent another email on November 6 asking whether they would, at a

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day before being released on unsecured bond. He has an upcoming criminal court hearing for the Maryland charges on November 23, 2020, and the summary offense in Luzerne County has not been resolved. The other fourteen Petitioners have complied with release terms.

minimum, agree to not re-detain the petitioners until after the parties have an opportunity to confer with this Court on November 12. Ex. 1. Respondents' counsel replied that ICE refused to agree not to re-detain the Petitioners once the mandate issues but that as of November 6 ICE had no plans to immediately re-detain any petitioners. *Id.*

5. Petitioners' counsel followed up with Respondents' counsel twice more for a pledge not to immediately re-detain any petitioner until the November 12 status conference because of Petitioners' medical vulnerabilities and the danger they would face from re-detention. *Id.* Respondents' counsel did not respond to these follow up emails. *Id.* Respondents' counsel declined to agree even to a three-day pause. *Id.*

6. Given the upcoming status conference at which time the Court can set a process for the orderly resolution of this matter, Petitioners currently seek limited, emergency relief from this Court that prohibits Respondents from re-detaining the Petitioners for 14 days.

7. As set forth in the accompanying Memorandum of Law, Petitioners ask this Court to prohibit ICE from re-detaining Petitioners and to instead maintain their release status, either pursuant to a Temporary Restraining Order or this Court's inherent authority for 14 days.

8. The accompanying Memorandum of Law explains how Petitioners satisfy the four-part test for a Temporary Restraining Order, or alternatively, how

this Court may enter an Order based on this Court's inherent authority to prevent conduct that threatens to frustrate the fair and orderly progression of a pending case.

9. Petitioners seek this protection not only because redetaining Petitioners without an orderly process violates their constitutional rights and puts their lives at risk, but also because it would strain this Court's resources.

10. Because this is a non-commercial case and because the balance of hardships favors the Petitioners, the security bond requirement in Federal Rule of Civil Procedure 65(c) should be waived. *B.H. v. Easton Area Sch. Dist.*, 827 F. Supp. 2d 392, 409 (E.D. Pa. 2011) (*citing Elliot v. Kiesewetter*, 98 F.3d 47, 59-60 (3d Cir. 1996)).

WHEREFORE, Petitioners respectfully request that this Honorable Court enter an Order that prohibits Respondents from re-detaining the Petitioners for 14 days.

Dated: November 9, 2020

Respectfully Submitted,

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*\*\* Petition for permission to file pro hac vice forthcoming; not admitted in DC;  
practice limited to federal court*

*\*\*\*Petition for permission to file pro hac vice forthcoming*

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of this Motion were served to all counsel of record via the CM/ECF system.

Dated: November 9, 2020

/s/ Vanessa L. Stine  
Vanessa L. Stine

*Attorney for Petitioners*

**CERTIFICATE OF NON-CONCURRENCE**

In accordance with Local Rule 7.1, Petitioners' counsel sought concurrence from the U.S. Attorney's Office, and while they did not respond prior to the filing of this emergency motion, they previously indicated that Respondents would not agree to not re-detain Petitioners once the mandate issues. As such, this certificate indicates Respondents do not concur with the relief sought.

Dated: November 9, 2020

/s/ Vanessa L. Stine  
Vanessa L. Stine

*Attorney for Petitioners*