

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nectali Ulises Romero Romero v. Polly Kaiser, et al.

Nectali Ulises Romero Romero v. Polly Kaiser, Case No. 22-cv-02508-TSH · No. 22-cv-02508-TSH · Decided
March 3, 2023

SUMMARY

The United States District Court for the Northern District of California denies Nectali Ulises Romero Romero’s amended petition for habeas corpus challenging his immigration detention and related bond and detention decisions. The court concludes that his due-process claim seeking a pre-deprivation hearing is largely moot because a hearing occurred, that most challenges to the BIA’s discretionary detention determinations are barred by 8 U.S.C. § 1226(e) and *Martinez v. Clark*, and that challenges to the IJ’s detention order were subject to prudential administrative exhaustion.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Thomas S. Hixson
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 3, 2023
DOCKET	22-cv-02508-TSH
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner's amended and supplemental petition for habeas corpus and complaint for declaratory and injunctive relief challenged his immigration detention, the Board of Immigration Appeals' order vacating a prior bond order, and an immigration judge's subsequent detention order.
STANDARD OF REVIEW	For the habeas claims, the court reviewed questions of law and constitutional or procedural claims while recognizing that 8 U.S.C. § 1226(e) barred review of discretionary dangerousness determinations. The court applied prudential administrative-exhaustion principles and reviewed the asserted APA claim under the arbitrary-and-capricious framework, assuming without deciding that the APA claim was available.

PRECEDENTIAL VALUE	Nonprecedential district-court order; precedential status is unknown in the supplied metadata.
PARTIES	Nectali Ulises Romero Romero v. Polly Kaiser, et al.

TOPICS

immigration detention procedural due process administrative law exhaustion of remedies
judicial review of agency action

PRACTICE AREAS

immigration law habeas corpus administrative law constitutional law immigration detention

QUESTIONS PRESENTED

1. Whether Romero's procedural-due-process claim was moot after the government provided the detention hearing he requested.
2. Whether procedural due process entitled Romero to have the same immigration judge preside over his second detention hearing.
3. Whether 8 U.S.C. § 1226(e) deprived the district court of jurisdiction to review the BIA's and immigration judge's discretionary determinations that Romero was dangerous or a flight risk.
4. Whether the BIA violated governing regulations by making factual findings on appeal and, if so, whether that error materially affected the detention decision or constituted a due-process violation.
5. Whether the BIA was required to consider alternatives to detention and whether its detention order violated the Administrative Procedure Act.
6. Whether Romero was required to exhaust administrative remedies before challenging the immigration judge's October 2022 detention order in federal court.

HOLDINGS

1. The claim was largely moot because the government provided Romero the hearing he sought after the court's preliminary injunction, and no further relief was available on that aspect of the claim.
2. Procedural due process does not include a right to have the same immigration judge preside over a later detention hearing.
3. Under 8 U.S.C. § 1226(e) and *Martinez v. Clark*, federal courts lack jurisdiction to review the discretionary determination that a noncitizen is dangerous or a flight risk when the detention is related to mandatory detention under § 1226(c).
4. Section 1226(e) did not bar review of claims alleging application of the wrong legal standard, impermissible fact-finding, reliance on legally impermissible factors, or failure to consider alternatives to detention, because those claims challenged legal standards or the statutory framework rather than the discretionary weight assigned to evidence.

5. The BIA violated 8 C.F.R. § 1003.1(d)(3)(iv)(A) by making three disputed factual findings on appeal, but the violation was immaterial and did not render the proceeding fundamentally unfair or establish a due-process violation.
6. The BIA was not required to consider alternatives to detention where it determined that Romero was dangerous and was a flight risk that no amount of bond could ameliorate.
7. Romero was required, as a prudential matter, to appeal the immigration judge's detention order to the BIA before seeking federal habeas review. Because he had not exhausted and had not requested a stay or shown an exception, the challenge was dismissed without prejudice.
8. Assuming an APA claim could be brought, Romero did not establish a viable APA claim because the court's identified regulatory error in the BIA's fact-finding was unlikely to have affected the outcome.

KEY QUOTATIONS

“Accordingly, the Court holds that the determination of flight risk is a discretionary decision, and when it is related to mandatory detention, Martinez forecloses review.” (Section C.1.b)

“The Court concludes that administrative exhaustion was required here.” (Section C.2.a)

“The Court dismisses Romero’s challenges to the IJ’s detention order without prejudice for failure to exhaust administrative remedies. (In the alternative, the Court would deny relief on those challenges.) The Court denies relief on all of Romero’s other claims.” (Section E)

FACTUAL BACKGROUND

Romero, a Salvadoran national and longtime United States resident, was convicted in California of lewd or lascivious acts with a child under fourteen and received a six-year sentence. After his release from prison, ICE detained him under the mandatory-detention provisions of 8 U.S.C. § 1226(c), but a prior federal habeas proceeding resulted in a bond hearing and conditional release. The BIA later vacated the release order and ordered detention without bond, after which this court required a new hearing before redetention. Following that hearing, the immigration judge found clear and convincing evidence that Romero was dangerous based principally on his repeated sexual offenses against a twelve-year-old girl and ordered him detained without bond.

PROCEDURAL HISTORY

Romero was previously released after a federal court ordered a bond hearing in an earlier habeas action. The BIA later vacated the immigration judge's release order and ordered Romero detained without bond. In this action, the court issued a preliminary injunction requiring adequate notice and a hearing before redetention; an immigration judge then held a hearing and ordered detention without bond. Romero amended his petition to challenge that order and the BIA's earlier decision. The court dismissed the challenges to the immigration judge's order without prejudice for failure to exhaust administrative remedies and denied relief on the remaining claims.

DISPOSITION

other

CASES CITED

- Romero v. Wolf, No. 20-cv-8031
- Martinez v. Clark, 36 F.4th 1219 (9th Cir. 2022)
- Torres-Aguilar v. I.N.S., 246 F.3d 1267, 1270 (9th Cir. 2001)
- Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017)
- Alcaraz-Enriquez v. Garland, 19 F.4th 1224, 1231 (9th Cir. 2021)
- Leonardo v. Crawford, 646 F.3d 1157, 1159-61 (9th Cir. 2011)
- Laing v. Ashcroft, 370 F.3d 994, 998-1000 (9th Cir. 2004)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-northern-district-of-ca/2023/nectali-ulises-romero-romero-v-polly-kaiser-et-al-p8du6c5c>