VERMONT SUPERIOR COURT
Rutland Unit
83 Center St
Rutland VT 05701
802-775-4394
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 23-CV-04114

Horacio Gabriel-Morales
Petitioner

v.

Nicholas Deml
Respondent

Decision on Petition for Writ of Habeas Corpus

Petitioner Horacio Gabriel-Morales was charged by the State of Vermont in 2020 with several serious felonies. He was arraigned and released on conditions. Afterwards, but prior to his 2023 trial, he was detained by federal immigration officials in Pennsylvania. Petitioner and the State of Vermont agreed that the criminal division should issue a writ of habeas corpus ad prosequendum to secure petitioner's attendance at the Vermont trial.

The writ was directed to the federal immigration officials detaining petitioner in Pennsylvania. The writ requested that petitioner be "turned over" to Vermont officials for delivery to this state, where he would be "held without bail" until trial on the Vermont criminal case. The writ promised that petitioner would be "returned" to federal officials "immediately after [petitioner] is released from state custody," and that the Rutland County Sheriff would "make the necessary arrangements" for petitioner's return to federal custody.

About one month after the writ issued, the federal immigration court "administratively closed" the immigration case. The immigration court explained in its order that the reason for the administrative closure was that petitioner was "currently detained/incarcerated" in Vermont and that petitioner was "unable to attend his immigration court proceedings" via remote means. The immigration court further explained that the case "remains under the jurisdiction and docket control of the immigration court" and invited the parties to "file a written motion to recalendar the case" if they desired "further action on this matter."

Petitioner's criminal trial ended last week with a verdict of not guilty. After the conclusion of the trial, petitioner was not released. Instead, his incarceration continued pursuant to the terms of the writ of habeas corpus ad prosequendum. The sheriff made arrangements to return petitioner to the custody of federal immigration officials in Pennsylvania, but before that could happen, petitioner filed (1) a motion in criminal division to vacate the writ, and (2) the present petition for a writ of habeas corpus. In both proceedings, petitioner contends that the effect of the administrative closure means that

petitioner either cannot or should not be returned to federal immigration officials. In this habeas petition specifically, petitioner seeks a determination that he is entitled to immediate release because the writ of habeas corpus ad prosequendum is not a valid basis for his continued detention under the circumstances.

The purpose of a writ of habeas corpus ad prosequendum is "to bring a prisoner into court to testify or for trial." *United States v. Mauro*, 436 U.S. 340, 357 (1978); accord *State v. Eesley*, 591 N.W.2d 846, 851 (Wis. 1999). As between states and the federal government, the writ is a means of facilitating "the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its laws in common territory." *Ponzi v. Fessenden*, 258 U.S. 254, 259, 261–63 (1922). The writs are issued under the common-law or statutory authority of each sovereign, e.g., 28 U.S.C. § 2241(c)(5); 12 V.S.A. § 3985; *Carbo v. United States*, 364 U.S. 611, 620–21 (1961), and are honored by the other as a matter of comity. *Carbo*, 364 U.S. at 620–21; *Ponzi*, 258 U.S. at 261–63. The writs are "a traditional way of securing the presence of a prisoner located in another jurisdiction," *State v. Castillo-Rodriguez*, 986 N.W.2d 78, 85 (Neb. 2023), and have been used by state courts to secure the presence of individuals in a variety of circumstances, including when the individual is otherwise in the custody of federal immigration officials, e.g., *State v. Kaipio*, 435 P.3d 1040, 1044 (Ariz. Ct. App. 2019); *State v. Campos*, 2020 WL 1909710 (Minn. Ct. App. 2020); *People v. Crosse*, 2016 WL 4691587 (N.Y. Crim. Ct. 2016).

The functioning of the writ derives from the priority system of dual-sovereignty government. The general rule is that the first sovereign to arrest and detain a defendant has priority of jurisdiction and retains that jurisdiction throughout the completion of its matter. *Ponzi*, 258 U.S. at 259–60. A writ of habeas corpus ad prosequendum is essentially a temporary "loan" of the defendant from the primary sovereign to the requesting authority. The requesting authority then returns the defendant to the primary sovereign upon the conclusion of the requesting authority's proceeding. The primary sovereign retains its jurisdiction throughout the "loan" unless the primary sovereign's case concludes in the meantime or the primary sovereign otherwise relinquishes its jurisdiction. *Johnson v. Gill*, 883 F.3d 756, 765 (9th Cir. 2018); *Thomas v. Brewer*, 923 F.2d 1361, 1367 (9th Cir. 1991); *Crawford v. Jackson*, 589 F.2d 693, 695 (D.C. Cir. 1978).

The question presented is whether federal immigration officials relinquished jurisdiction by administratively closing petitioner's case. As a legal procedure, the term "administrative closure" is confusing, because it uses the term "closure." However, an administrative closure "does not result in a final order," and it "does not terminate or dismiss the case." *Cruz-Valdez*, 28 I. & N. Dec. 326, 326, 2021 WL 3021053 (Op. Atty. Gen. 2021); *W-Y-U*, 27 I. & N. Dec. 17, 18, 2017 WL 1407265 (B.I.A. 2017); *Avetisyan*, 25 I. & N. Dec. 688, 692, 2012 WL 380562 (B.I.A. 2012); *Amico*, 19 I. & N. Dec. 652, 654 n.1, 1988 WL 235457 (B.I.A. 1988). An administrative closure is instead a docket-management tool—"an administrative convenience"—which allows for cases to be removed from the active calendar in certain situations. *Amico*, 19 I. & N. Dec. at 654 n.1. The tool is used in a wide variety of circumstances, including cases in which the respondent is pursuing an application or a petition with a different agency, the respondent is waiting for a visa to become available, the respondent has been granted temporary protected status, or the respondent is not otherwise an immigration enforcement priority. See U.S. Dep't of Justice, Exec. Office for Immig. Rev., Director's Mem. No. 22-03, "Administrative Closure" (Nov. 22, 2021), available at https://www.justice.gov/eoir/book/file/1450351/download (describing policy reasons why immigration

courts might choose to administratively close a particular case). The idea is that, for one reason or another, the case is better put aside for the time being while immigration officials focus on other matters. In a case that has been administratively "closed," any party who believes that the case should proceed to a merits determination and final judgment may file a motion to re-calendar the matter, at which point the case would be taken up again. *W-Y-U*, 27 I. & N. Dec. at 20, 2017 WL 1407265; U.S. Dep't of Justice, Exec. Office for Immig. Rev., *Immigration Court Practice Manual* §§ 5.7(i) & 5.10(u), available at https://www.justice.gov/eoir/reference-materials/ic/.

Given this understanding, the "administrative closure" of petitioner's federal immigration case does not mean that the federal immigration case is closed. There is no final order, and there is no indication that federal immigration officials intended to relinquish their authority or otherwise did not want petitioner returned to federal custody. On the contrary, the immigration-court order expressly stated that the matter was effectively paused while petitioner was incarcerated in Vermont, and that the court was otherwise retaining jurisdiction over the case. In other words, nothing in the immigration-court order indicates that the writ should be interpreted as somehow invalid. Federal officials may hereafter decide to pursue the case to final judgment or not, but that decision should be made by federal immigration officials in the still-extant immigration case. It is not a decision that can or should be made by this state habeas court, nor should this court attempt to predict what federal officials may do.

Petitioner's remaining arguments relate to the authority of our courts and law-enforcement agencies to incarcerate a person on the basis of a federal immigration detainer, e.g., 8 C.F.R. § 287.7(d); *Ochoa v. Bass*, 2008 OK CR 11, ¶¶ 18–19, 181 P.3d 727; *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1154–59 (Mass. 2017). Several different doctrines are discussed in those materials, but the doctrines do not apply to this case because petitioner is not being held on the basis of a detainer but rather pursuant to the terms of the writ of habeas corpus ad prosequendum. The writ is "not a detainer," and the procedures that govern the writ are not subject to the limitations or protections set forth in other federal laws regarding detainers and transfers of persons between authorities and sovereigns. *Mauro*, 436 U.S. at 361; *Commonwealth v. Florence*, 387 N.E.2d 152, 153–54 (Mass. Ct. App. 1979); *Eesley*, 591 N.W.2d at 851.

Here, the terms of the writ specify that, upon conclusion of state custody, petitioner shall be returned to federal immigration officials, and that the Rutland County Sheriff is responsible for making "the necessary arrangements" for petitioner's "immediate" return. It appears that the sheriff has made these arrangements and is awaiting only the outcome of these proceedings.

For the foregoing reasons, the petition for a writ of habeas corpus is denied.

Electronically signed on Thursday, October 5, 2023 pursuant to V.R.E.F. 9(d).

H. Dickson Corbett
Superior Court Judge