

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

QUAIWEA BARSHELL SLEBO, : CIVIL ACTION NO. 3:09-CV-1335
Petitioner :
: (Judge Munley)
v. :
:
THE DISTRICT DIRECTOR FOR :
IMMIGRATION CUSTOM :
ENFORCEMENT, et al., :
Respondents :

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MEMORANDUM

Quaiwea Barshell Slebo ("Slebo"), presently a detainee of the Bureau of Immigration and Customs Enforcement ("ICE"), incarcerated at the York County Prison, York, Pennsylvania, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. §2241 on July 13, 2009. (Doc. 1). He is seeking to proceed in forma pauperis (Doc. 2) and requests that an order to show cause be issued (Doc 3). For the reasons set forth below, the motion to proceed in forma pauperis will be granted, his motion for an order to show cause will be denied, and the petition for writ of habeas corpus will be denied.

I. Statement of Facts

Slebo, a native and citizen of Liberia, is presently in removal proceedings. (Doc. 1, at 5). According to Slebo, "the government is seeking to remove [him] on the grounds that [he] is an Aggravated Felon. [He] was convicted in the District Court of Worcester, Massachusetts for an offense of possession of ammunition in violation of 18 U.S.C. 922(G)(1)." (Doc. 1, at 6.) He indicates that he has been in ICE custody since December 2008, and does not yet have a final order of removal. (Doc. 1, at 1.)

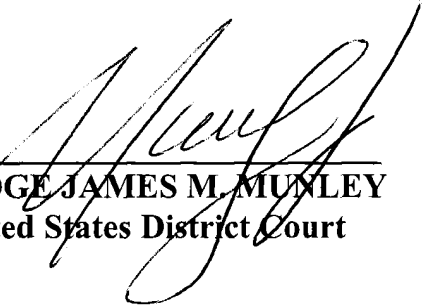
II. Discussion

The apprehension and detention of aliens, pending removal decisions, are governed by § 236 of INA, 8 U.S.C. § 1226. Section 1226(c)(1)(B), instructs the Attorney General to take into custody and detain any alien who is deportable by reason of having committed any offense covered in section 8 U.S.C. § 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D). In Demore v. Kim, 538 U.S. 510 (2003), the Supreme Court found that mandatory pre-order detention under § 1226(c) does not violate the protections guaranteed under the Constitution. In Demore, a lawful permanent resident filed a habeas petition challenging the no-bail provision of § 1226(c), pursuant to which he had been held for six months during the pendency of removal proceedings against him. The Supreme Court held that detention of lawful permanent residents during removal proceedings is constitutionally permissible even where there has been no finding that they are unlikely to appear for their deportation proceedings. See id. at 524-529.

Because Slebo is subject to removal due to the commission of an aggravated felony, 8 U.S.C. § 1227(a)(2)(A)(iii), his detention is mandatory pursuant to § 1226(c). Removal proceedings are not yet complete; detention is therefore both mandatory and constitutionally permissible.

An appropriate order will issue.

BY THE COURT:



JUDGE JAMES M. MUNLEY
United States District Court

Dated: July 17, 2009

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	:	(Judge Munley)
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.....

ORDER

AND NOW, to wit, this 11 day of July 2009, in accordance with the foregoing memorandum, it is hereby **ORDERED** that:

1. The application to proceed in forma pauperis (Doc. 2) is **GRANTED**.
2. Petitioner's motion for an order to show cause (Doc. 3) is **DENIED**.
3. The petition for writ of habeas corpus (Doc. 1) is **DENIED**.
4. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court