

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEK NGO,

Petitioner,

v.

UNITED STATES MARSHALS SERVICE,

Respondent.

ORDER

03-C-722-C

This is a petition for a writ of habeas corpus. Petitioner, Tek Ngo, an inmate at the Dane County jail in Madison, Wisconsin, claims that his custody is in violation of the First, Fourth, Fifth, Sixth and Ninth Amendments of the Constitution of the United States. 28 U.S.C. §2241. Petitioner has paid the \$5 filing fee. Because petitioner should have sought review of his detention order under 18 U.S.C. § 3145 rather than 28 U.S.C. § 2241, I must dismiss petitioner's request for habeas corpus relief.

In his petition, petitioner alleges the following facts.

FACTUAL ALLEGATIONS

On August 11, 2003, Eau Claire County officials Jeffrey E. Wilson and Andrew Falk

arrested him under the guise of a federal warrant for arrest and took him to the Eau Claire County jail. The next day, Eau Claire County officers took petitioner to the United States District Court for the Western District of Wisconsin in Madison, Wisconsin. Upon his arrival, petitioner was handed an “indictment” stating that he had violated Title 21 U.S.C. 841(a). United States Magistrate Judge Joseph W. Skupniewitz ordered petitioner to be detained in the Dane County jail until August 18, 2003. On August 18, 2003, petitioner appeared before the magistrate judge, who again ordered him detained.

The warrant for petitioner’s arrest is defective because the plaintiff is the “United States of America,” an improper entity under the Constitution and Title 28 of the United States Code. The Fourth Amendment to the Constitution requires a warrant to be signed by an Article III judge. Furthermore, the “indictment” is invalid because it contains insufficient facts describing the nature and cause against petitioner in accordance with the Fifth and Sixth Amendment. The indictment does not have a verified complaint attached to it as required by the Fourth Amendment and the Federal Rules of Criminal Procedure. Finally, this court has not performed a probable cause hearing before an Article III judge in order to invoke this court’s jurisdiction.

DISCUSSION

Petitioner argues that because the warrant and indictment are defective, his custody is unlawful and he should therefore be released. Petitioner requests that this court direct respondent United States Marshals Service to bring him before this court to show cause why he should not be released immediately. The request must be denied. The Court of Appeals for the Seventh Circuit has held that persons detained in jail pending trial must follow the procedures outlined in the Bail Reform Act, 18 U.S.C. § 3141 et seq. In United States v. Pipito, 861 F.2d 1006, 1009 (7th Cir. 1987), the plaintiff argued that he was unconstitutionally detained from the time of his arrest until his sentencing. Instead of seeking a review of the detention order pursuant to 18 U.S.C. § 3145, he filed a petition for habeas corpus under 28 U.S.C. § 2241. Id. The court found that the district court had not erred in refusing to entertain the petitioner's request for habeas relief. Id. As the court explained in Pipito, a petitioner's challenge to the validity of a warrant and indictment should be raised in his criminal case on a motion to revoke the magistrate judge's detention order under 18 U.S.C. § 3145. Petitioner cannot use 28 U.S.C. § 2241 to raise these claims in a habeas corpus action.

ORDER

IT IS ORDERED that petitioner Tek Ngo's petition for a writ of habeas corpus is DISMISSED and the clerk of court is directed to enter judgment for respondent United States Marshals Service and close this case.

Entered this 2nd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge