

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

PETE MCKOY, : 3:03cv1579(WWE)  
Petitioner, :  
 :  
v. :  
 :  
SIEMINSKI; and :  
IMMIGRATION & NATURALIZATION :  
SERVICE, :  
Respondents. :

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Pete McKoy, brings this petition for a writ of habeas corpus, seeking relief from deportation based on his claim of derivative United States citizenship. For the following reasons, the petition will be dismissed for lack of jurisdiction.

Derivative Citizenship

Once removal proceedings have been initiated, a petition for review of a citizenship claim must be first presented to the court of appeals pursuant to 8 U.S.C. Section 1252(b)(5). The court of appeals will transfer the matter to the district court if a genuine issue of material fact exists regarding citizenship. 8 U.S.C. § 1252(b)(5)(B). A petition for review with the court of appeals must be filed within 30 days after the date of the final order of removal. 8 U.S.C. § 1252(b)(1). An untimely

petition will deprive the court of appeals of jurisdiction.  
Malvoisin v. INS, 268 F.3d 74, 75-76 (2d Cir. 2001).

A habeas petition filed in a district court that raises a claim to citizenship may be transferred to the court of appeals pursuant to 28 U.S.C. Section 1631 in the interest of justice. The action is then allowed to proceed as if it had been filed in the proper forum. In this instance, the petition was filed more than 30 days after the April 30, 2002 final order of removal, and therefore would not be considered timely filed even if this court were to transfer the petition to the court of appeals pursuant to 28 U.S.C. Section 1631. Accordingly, the petition will be dismissed for lack of jurisdiction.

**CONCLUSION**

For the foregoing reasons, the petition is DISMISSED for lack of jurisdiction. The clerk is instructed to close this case.

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Warren W. Eginton, Senior U.S. District Judge

Dated at Bridgeport, Connecticut this \_\_\_ day of January,  
2004.