

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

BALTIMORE DENNIS	:	
	:	Civil Action No.
v.	:	3:01 CV 279 (SRU)
	:	
IMMIGRATION AND	:	
NATURALIZATION SERVICE and	:	
WARDEN, STATE PRISON	:	

**RULING ON PETITIONER’S MOTION FOR COURT ORDER DIRECTING INS TO
RETURN PETITIONER TO THE UNITED STATES FORTHWITH**

On February 20, 2001, petitioner Baltimore Dennis filed a pro se Petition for A Writ of Habeas Corpus under 28 U.S.C. § 2241, claiming violations of his constitutional rights to due process and effective assistance of counsel at his deportation hearing, and requesting a stay of deportation. In response to an inquiry by the court, counsel for the INS represented that he would provide the court with at least fifteen days’ notice of Dennis’ deportation. Thereafter, on May 2, 2001, the Immigration and Naturalization Service (“INS”) deported Dennis, without providing the promised notice to the court. On October 19, 2001, through appointed counsel, Dennis filed a Motion for Court Order Directing INS to Return Petitioner to the United States Forthwith.

For the following reasons, pursuant to the court’s inherent powers “to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases,” Chambers v. Nasco, Inc., 501 U.S. 32, 43 (1991), Dennis’ Motion for Court Order Directing INS to Return Petitioner to the United States Forthwith (doc. # 5) is granted.

BACKGROUND

Dennis was originally scheduled for a removal hearing by the INS on January 31, 2001. Counsel then representing Dennis allegedly moved up by one day the date of Dennis’ hearing,

without informing Dennis. At the January 30, 2001 hearing, in Dennis' absence and without his knowledge, Dennis' counsel allegedly refused a one-day continuance offered by the Court and waived Dennis' right to be present. Dennis, who showed up for the hearing the following day, i.e., the originally scheduled hearing date, was informed that an order of removal had been entered against him the day before.

On February 20, 2001, Dennis filed a pro se habeas petition, claiming violations of his constitutional rights to due process and effective assistance of counsel in connection with his deportation hearing. Dennis also requested a stay of his order of deportation. On March 20, 2001, in response to the court's inquiry regarding the status of Dennis' deportation, James Filan, Assistant United States Attorney and counsel for the INS, informed the court that Dennis' deportation was not imminent, and that, according to United States Attorney's Office policy, Filan would provide the court with fifteen days' notice before Dennis would be deported. On April 3, 2001, the INS misaddressed an email notice to Filan concerning the scheduling of Dennis' deportation. Accordingly, Filan was unaware of the scheduled deportation date, and on May 2, 2001, Dennis was deported to Jamaica without notice to the court.

In response to a request for a written explanation how Dennis could have been deported without notice to the court, AUSA Filan wrote to the court on June 5, 2001. In that letter, the INS proposed several alternatives to address the situation. These included: (1) appointing counsel to litigate the merits of the habeas petition with Dennis' assistance from Jamaica; and (2) ordering the INS "to return petitioner to the United States forthwith." The INS urged against an order to return Dennis "in light of the great expense involved."

On May 30, 2001, the court appointed Brett Dignam of the Jerome N. Frank Legal

Services Organization as counsel for Dennis. Dennis' counsel has represented that she has made good faith efforts to provide effective assistance of counsel to him, but has encountered numerous impediments to doing so. Counsel maintains that the following facts contribute to the difficulty in providing effective representation to Dennis:

1. Dennis resides in Jamaica with others and cannot discuss his case privately from his residence.
2. To discuss his case with counsel, it is necessary to schedule a return call from a pay phone on a public street.
3. The pay phone does not permit privacy and the sound quality of the call is reduced by traffic and other noises.
4. These phone calls do not permit counsel to communicate about the details of this factually and procedurally complex case with Dennis, as necessary to permit him to assist in the preparation of his own case.
5. There is no fax machine available to Dennis.
6. Mail takes approximately two weeks to be sent to Dennis in Jamaica and an additional two weeks to be returned to counsel.
7. Dennis is unable to read.

On October 19, 2001, Dignam filed, on behalf of Dennis, a Motion for Court Order Directing INS to Return Petitioner to the United States Forthwith. The INS opposed the motion, and the court heard oral argument on February 8, 2002.

ANALYSIS

This is not the first case in which this District has grappled with the premature deportation of a habeas petitioner. See Fuller v. Immigration & Naturalization Service, 144 F. Supp. 2d 72 (D. Conn. 2000). Hopefully, it will be the last. To its credit, the United States Attorney's Office has established policies and procedures that make a repeat of the events that led to Dennis'

untimely deportation extremely unlikely. Those policies and procedures, however, offer little solace to Dennis, who was deported despite less effective policies to give the court notice of an imminent deportation.¹

This case does appear to be the first in this District in which a habeas petitioner was deported without notice to the court, despite the representation of the U.S. Attorney's Office that it would provide advance notice to permit the court to consider the merits of the petition before deportation occurred. The effect of the deportation without notice is obvious: Dennis is no longer present to assist in the prosecution of his petition. Had the INS provided the promised notice, the court would either have decided the merits of the petition before the scheduled deportation or it would have granted Dennis' motion to stay deportation.² In either event, Dennis would have remained in this country and been able to present, or to assist counsel with the presentation of, the merits of the petition at the time the court considered it.

The difficulties caused by Dennis' deportation are not complicated by arguments that the deportation deprives the court of power to act. Here the respondent expressly acknowledges that the court has subject matter jurisdiction over this proceeding, notwithstanding the petitioner's deportation, *cf. Fuller*, 144 F. Supp. 2d at 75 (INS argued that Fuller's deportation divested court

¹ The court appreciates the courtesy of advance notice of deportation, but that notice benefits the parties, as well. By providing the court with fifteen days' notice of deportation, the U.S. Attorney's Office often avoids the need to prepare and file an expedited response to a habeas petition or a motion to stay deportation. As a result, the court has time to rule carefully on the merits of a petition before deportation or to stay those cases that cannot properly be considered immediately. The petitioner therefore obtains a more careful and reasoned decision from the court.

² Important to the prediction that the motion to stay would have been granted is the fact that Dennis' petition raises non-frivolous claims.

of jurisdiction), and that the court has the authority to order Dennis' return. The court agrees.

No rule or statute directly prescribes the authority of the court to address this unique problem. Nevertheless, the court has the inherent authority, as recognized by the Supreme Court in Chambers, 501 U.S. at 43-47, to order Dennis' return.³ Federal courts possess inherent powers that provide necessary tools "to promote efficiency in their courtrooms and to achieve justice in their results." Eash v. Riggins Trucking Inc., 757 F.2d 557, 564 (3d Cir. 1985); see Chambers, 501 U.S. at 58 (Scalia, J., dissenting) (some elements of inherent authority are "indefeasible, among which is a court's ability to enter orders protecting the integrity of its proceedings."); G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 652 (7th Cir. 1989) ("inherent authority to preserve the efficiency, and more importantly the integrity, of the judicial process"). "At the very least, the inherent power must continue to exist to fill in the interstices." Chambers, 501 U.S. at 46.

The relevant question in this case is whether the court should exercise its inherent power to redress Dennis' deportation. The INS argues that returning Dennis to the United States would be "extraordinary," that Dennis fails to show he is entitled to mandamus relief, and that Dennis' claims on the merits are weak. In sum, the INS argues that ordering Dennis back to the United States will prove futile, because he will ultimately not prevail on his petition and will simply need to be deported again.

These arguments are unpersuasive. The court need not find that Dennis is likely to prevail

³ In the alternative, the court has authority to order the same relief under 28 U.S.C. § 1651(a), because these facts are sufficiently extraordinary to implicate the All Writs Act. See Michael v. Immigration and Naturalization Service, 48 F.3d 657, 663-64 (2d Cir. 1995); Fuller, 144 F. Supp. 2d at 81-83 (invoking All Writs Act to order petitioner returned to the United States from Jamaica).

on the merits of his petition before ordering his return. Dennis has made a credible showing that his deportation has effectively prevented him from obtaining the meaningful assistance of appointed counsel. While acting pro se, Dennis raised non-frivolous claims; his appointed counsel convincingly argue that, under the particular circumstances facing Dennis, the ability to communicate about the details of Dennis' case prevent counsel from both presenting Dennis' present claim and identifying other potential bases of relief. One practical effect of Dennis' deportation is that one party to this proceeding has effectively prevented the other from obtaining advice of counsel. Another practical effect is that the deportation has already unduly delayed resolution of this proceeding. Unless Dennis is returned, this matter will be further delayed due to the difficulty counsel has experienced when attempting to communicate with Dennis.

The expense involved in returning Dennis to the United States is not great in any sense. A cursory check of airfares posted on the internet showed a round-trip fare between Jamaica and Hartford available for \$466.00. This is less than a run-of-the-mill discovery sanction. Courts routinely order parties to provide documents or other information necessary to the other party's preparation of his case and sanction parties or counsel for the failure to do so. Courts also often impose consequences on a party who fails to comply with a representation made to the court or a party whose actions cause delay or otherwise impact the efficiency and fairness of judicial proceedings. The deportation of a petitioner may not have these types of effects in every case, but the record here demonstrates that the premature deportation in this case has and will severely impact Dennis' ability to litigate the merits of his claims.

Finally, it is significant to the decision to exercise the discretion to require Dennis' return that such an order is only necessary because the court relied on a representation of the Assistant

United States Attorney. Had the promised notice been given, the court could either have decided the merits of the petition or ruled on the motion to stay while Dennis was still present. Thus, although there is no evidence whatsoever here that counsel acted in bad faith, it was a lack of communication between the AUSA and his client that created this problem. The court cannot operate effectively if it cannot rely upon the representations of counsel, especially those of the United States Attorney's Office. When such a representation has been made and the court relies on it to its – and another party's – detriment, principles of fundamental fairness require that the consequences of the mistake fall on those who made it.⁴

CONCLUSION

For the foregoing reasons, Dennis' Motion for Court Order Directing INS to Return Petitioner to the United States Forthwith (doc. # 5) is granted. The INS shall return Baltimore Dennis to the United States immediately, and in no event later than 21 days from entry of this order. Counsel for the INS shall provide Dennis' counsel with notice of the travel arrangements.

SO ORDERED this _____ day of February 2002, at Bridgeport, Connecticut.

Stefan R. Underhill
United States District Judge

⁴ Records submitted to the court indicate that six collect phone calls from the petitioner, not including the most recent telephone bills, have cost \$315.66. See Affidavit of Maureen Furtak, Senior Administrative Assistant, Jerome N. Frank Legal Services Organization. These costs fall on the wrong party and, unless stanchd, will soon exceed the cost of Dennis' return.

