

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

RAFIU AJADI ABIMBOLA,	:	
	:	
Petitioner,	:	NO. 3:04CV856 (MRK)
	:	
v.	:	
	:	
TOM RIDGE, et al.,	:	
	:	
Respondents.	:	

**RULING**

Currently pending before the Court is *pro se* Petitioner Rafiu Ajadi Abimbola's petition for writ of habeas corpus [doc. #1] pursuant to 28 U.S.C. § 2241, and numerous auxiliary motions related to this habeas petition. For the reasons stated below, Petitioner's writ of habeas corpus [doc. #1] is DENIED without prejudice, and all of Petitioner's other pending motions [docs. ## 2, 4, 5, 7, 9, 14, 15] are DENIED AS MOOT.

The Second Circuit's recent opinion in *Abimbola v. Ashcroft*, 378 F.3d 173 (2d Cir. 2004) summarized Mr. Abimbola's relevant personal and legal history as follows:

Petitioner Rafiu Ajadi Abimbola, a citizen of Nigeria, entered the United States in 1991 and was granted lawful permanent resident status on September 8, 1994. In the latter half of the 1990s, Abimbola was charged with several federal and state crimes. On February 24, 1997, Abimbola pleaded guilty in the United States District Court for the Eastern District of New York to bank fraud in violation of 18 U.S.C. § 1344. Moreover, on November 7, 1997, he entered an *Alford* plea to larceny in the third degree in violation of Connecticut General Statutes § 53a-124. . . . In June 1999, based on the federal conviction, the Immigration and Naturalization Service ("INS") served Abimbola with a notice to appear. The INS sought Abimbola's removal pursuant to § 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(A)(iii), for an aggravated felony conviction as defined under INA § 101(a)(43)(G). 8 U.S.C. § 1101(a)(43)(G). [T]hat subsection defines "aggravated felony" as "a theft offense (including

receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year." *Id.* Although the original charge only included the federal conviction, the INS amended the notice to appear by adding the Connecticut larceny conviction. The INS asserted that Connecticut third-degree larceny is a theft offense and therefore also an aggravated felony.

*Abimbola*, 378 F.3d at 174 (footnote omitted).

Mr. Abimbola is currently in the physical custody of the Department of Homeland Security, Immigration and Customs Enforcement ("ICE") under the control of the District Director in New Orleans, and is physically detained at the Etoawh County Detention Center in Gadsen, Alabama.<sup>1</sup> Respondents' Mem. in Resp. [doc. #16], at 1. In his petition, Mr. Abimbola challenges the constitutionality of his continued detention under the Immigration Nationality Act ("INA") § 241, 8 U.S.C. § 1231, invoking the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001).<sup>2</sup>

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<sup>1</sup> The Court assumes, without deciding, that it has jurisdiction, even though Mr. Abimbola is detained outside of the State of Connecticut. *See, e.g., Rumsfeld v. Padilla*, --- U.S. ---, 124 S.Ct. 2711, (2004), (Kennedy, J. concurring) ("In my view, the question of the proper location for a habeas petition is best understood as a question of personal jurisdiction or venue."); *id.* at 2734 (Stevens J., dissenting) ("It bears emphasis that the question of a proper forum . . . is not one of federal subject-matter jurisdiction . . . [r]ather the question is one of venue . . ."); *but see id.* at 2722 (Rehnquist, J.) ("The plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement."). *See also Somir v. United States*, No. 04-CV-2974, --- F.Supp.2d ----, 2005 WL 174645, at \*3 (E.D.N.Y. Jan. 25, 2005) ("Venue considerations traditionally have acted alongside jurisdictional barriers to limit the number of courts that may properly entertain a habeas petition. That limitation appears to have survived *Padilla*, in which a majority of the justices noted that the question of where a habeas petition may be filed is best understood as a one involving both personal jurisdiction and venue.") (citations omitted); *Garcia-Rivas v. Ashcroft*, No. 04CV292(NRB), 2004 WL 1534156, at \*2 n.4 (S.D.N.Y. Jul. 7, 2004) ("[T]he majority of justices held that the issue in *Padilla* was not whether the Southern District of New York had jurisdiction over the petition (which presumably it did) but whether a proper respondent was before the court and venue was appropriate.").

<sup>2</sup> Mr. Abimbola also asserts a constitutional challenge to his detention under INA § 236(c), 8 U.S.C. § 1226(c), citing *Demore v. Kim*, 538 U.S. 510, 522-23 (2003). However, Mr.

The Court notes at the outset that resolution of Mr. Abimbola's *Zadvydas* claim has been unduly complicated and hindered by the fact that, so far as the Court can tell, Mr. Abimbola has filed four habeas petitions pursuant to 28 U.S.C. § 2241 within the last four years,<sup>3</sup> and additionally has sought two direct petitions in the Second Circuit for review of decisions issued by the Bureau of Immigration Appeals ("BIA") regarding his removal.<sup>4</sup> Over these four years, Mr. Abimbola has been actively pursuing all six of these petitions in either the Eastern District of New York, the District of Connecticut, the Court of Appeals for the Second Circuit, the Court of Appeals for the Fifth Circuit, or some combination thereof. Mr. Abimbola has sought, *inter*

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Abimbola is not being held under INA § 236(c), but rather under INA § 241. *See Chimbo v. Sec'y of Dep't of Homeland Sec.*, No. 3:04CV1671(MRK), 2004 WL 2713154, at \*7 (D. Conn. Nov. 18, 2004); *Abimbola v. Ashcroft*, No. 01 CV 5568(NG), 2002 WL 2003186, at \*5 (E.D.N.Y. Aug. 28, 2002). Because he is not being detained under INA § 236, the Court has no occasion to consider Mr. Abimbola's constitutional arguments concerning that section. *See, e.g., Samuel v. I.N.S.*, No. 01CV3413, 2005 WL 120221, at \*7 (S.D.N.Y. Jan. 20, 2005) ("Because [Petitioner] now has a final order of removal, he no longer is being detained under the statute he seeks to have declared unconstitutional. 'The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed.' ") (quoting *Bankhole v. I.N.S.*, No. 02CV702(EBB), 2002 WL 32002678, at \*1 (D. Conn. Aug. 9, 2002)).

<sup>3</sup> The four habeas petitions are as follows: (1) *Raifu Ajadi Abimbola v. Ashcroft, et al.*, No. 01CV5568(NG) ("*Abimbola I*") (filed August 16, 2001 in the Eastern District of New York); (2) *Raifu Abimbola Ajadi v. Connecticut Superior Court ("Abimbola II")*, No. 01CV1800(DJS) (filed Sept. 19, 2001 in the District of Connecticut); (3) *Raifu Ajadi Abimbola v. Ashcroft, et al. ("Abimbola III")*, No. 02CV1825(RNC) (filed Oct. 17, 2002 in the District of Connecticut); and (4) the petition in the instant case, *Raifu Ajadi Abimbola v. Ridge, et al. ("Abimbola IV")*, No. 04CV856(MRK) (filed May 24, 2004 in the District of Connecticut). Upon representation of the Government, Mr. Abimbola also has a pending Connecticut state habeas corpus petition challenging his underlying Larceny in the Third Degree conviction. *See Respondents' Status Report* [doc. #32], at 5. The Court agrees with the Government that this state habeas petition has no direct bearing on this case.

<sup>4</sup> The two direct appeals from the BIA are as follows: (1) *Abimbola v. Ashcroft et al.*, No. 02-4055 (filed Feb. 25, 2002 in the Court of Appeals for the Second Circuit); and (2) *Abimbola v. Ashcroft et al.*, No. 02-4551 (filed Oct. 3, 2002 in the Court of Appeals for the Second Circuit).

*alia*, motions to stay his removal, motions for reconsideration of district court rulings, appeals from district court rulings, motions for rehearing, motions for rehearing *en banc*, and petitions for writ of certiorari in some or all of these six petitions. Moreover, Mr. Abimbola has pursued some of these motions and petitions simultaneously, often without one court knowing what the other court or courts were doing.

From the convoluted record before the Court, at least one fact is clear: Mr. Abimbola has sought and/or received numerous judicial stays of his removal throughout his four years of filing petitions with the various courts mentioned above, and in so doing, he has single-handedly created a considerable degree of uncertainty as to the existence and duration of judicial stays of his removal at any given moment in time.<sup>5</sup> According to the record before the Court, ICE believes that "[a]t present, the mandate of the court ordered stay for 2 cases [in the Second Circuit] have not been issued. It appears that the Stay of Removal remains in effect." Decision to Continue Detention Following File Review, dated October 27, 2004, Ex. 6 attached to Respondents' Sur-Reply [doc. #23]. Because ICE believes that a court-ordered stay of removal remains in effect, Mr. Abimbola is currently not being removed even though the Embassy of Nigeria is apparently ready to issue travel documents for Mr. Abimbola's removal. *See* Respondents' Sur-Reply [doc. #23] at 1-4, 5; *see also* Decl. of Dean A. Hoth, attached to Notice

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<sup>5</sup> For instance, Mr. Abimbola claims that there was over a six-month period between August 2002 and April 2003 when no judicial stays were in effect, Petition [doc. #1] at ¶ 16. The Respondents originally asserted that the Second Circuit issued a stay of removal on July 17, 2002 in Mr. Abimbola's petition for review of the BIA's final determination (Second Circuit docket number 02-4055) that was not ultimately vacated until September 20, 2004 when the final judgment mandate issued. *See* Respondents' Mem. in Resp. to Order to Show Cause [doc. #16], at 10-11 & n.3. Upon further review, Respondents concede that there apparently was no stay during this time period. *See* Respondents' Sur-Reply [doc. #23], at 1-4.

of Filing [doc. #18].

There is, therefore, a simple response to Mr. Abimbola's complaints regarding his continued detention pending removal: A self-inflicted wound cannot be grounds for his *Zadvydas* claim. *See, e.g., Guang v. I.N.S.*, No. CV025916(DGT), 2005 WL 465436, at \*2 (E.D.N.Y. Feb. 28, 2005) (denying *Zadvydas* claim where "petitioner's own actions – not the government's inability to deport him – have resulted in his continued detention during the past five years, during which time he has filed motions and/or appeals with the administrative courts, Second Circuit, and district court, with corresponding requests for stays of removal."); *Sanusi v. I.N.S.*, No. 03CV0193(SJ), 2003 WL 21696945, at \*3 (E.D.N.Y. Jul. 15, 2003) ("[I]t appears the Petitioner's removal has been delayed by his petitions for review of his removal order, filed with the Court of Appeals for the Second Circuit, which issued a stay of removal pending its review. This stay was cited by the INS as the reason for his continued detention and delay in removal. Accordingly, Petitioner has not satisfied the requirement in *Zadvydas* that he 'provide[ ] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.' ") (quoting *Zadvydas*, 533 U.S. at 701); *Lecky v. Reno*, No. 3:00CV1397(JBA), 2002 WL 31760253, at \*2 (D. Conn. Dec. 06, 2002) ("[E]ven assuming petitioner has been detained under INA § 241(a) since February 3, 2000, the date the BIA dismissed petitioner's appeal, such detention is not unlawful under [*Zadvydas*] since it is largely due to the stay petitioner sought in connection with his challenge to removal."); *Abimbola v. Ashcroft*, No. 01CV5568(NG), 2002 WL 2003186, at \*7 (E.D.N.Y. Aug. 28, 2002) (same); *Guner v. Reno*, No. 00CV8802(DC), 2001 WL 940576, at \*2 (S.D.N.Y. Aug. 20, 2001) (same); *Copes v. McElroy*, No. 98CV2589(JGK), 2001 WL 830673, at \*6 (S.D.N.Y. July 23, 2001) (same).

Respondents represent, and the Court has no reason to believe otherwise, that but for Mr. Abimbola seeking and/or receiving numerous judicial stays and filing his numerous petitions for reconsideration and appeals, Mr. Abimbola could have been speedily deported to Nigeria some time ago. In light of the fact that Mr. Abimbola's own actions in seeking judicial stays of his removal (and not moving to dissolve them) are the reason for his continued detention and Respondents' failure to remove him sooner, the Court DENIES his Petition for a writ of habeas corpus [doc. #1]. *See Zadvydas*, 533 U.S. at 701 (petitioner must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future").<sup>6</sup>

If Mr. Abimbola truly wishes to end his detention and effect his prompt removal to Nigeria, he should take immediate steps to definitively and affirmatively clear up any lingering doubt whether any judicial stays of his cases are still in effect. He should start by informing the Second Circuit – in an appropriately captioned pleading on which Respondents are copied – that he would like that court to dissolve any stay it may have entered so that he can be promptly removed to Nigeria. According to Respondents' representations, once he confirms to ICE that no

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<sup>6</sup> Mr. Abimbola relies on *Oyedeki v. Ashcroft*, 332 F. Supp. 2d 747 (M.D. Pa. 2004), in support of his *Zadvydas* claim and his contention that he should be released from custody immediately. *See* Petitioner's Supplemental Resp. in Opp'n [doc. #22]; Petitioner's Objection to Respondents' Sur-Reply [doc. #25], at 4-5. Though not binding on this Court (and often contrary to established Second Circuit law), at most this case stands for the proposition that due process is not satisfied by "rubberstamp denials" of a petitioner's periodic custody reviews by ICE. *Oyedeki*, 332 F. Supp. 2d. at 754 (internal quotation omitted). Mr. Abimbola does not bring a constitutional due process challenge against ICE's recent Decision to Continue Detention Following File Review, dated October 27, 2004, Ex. 6 attached to Respondents' Sur-Reply [doc. #23]. Thus, his reliance on *Oyedeki* is inapposite. Moreover, the facts of *Oyedeki* are very different from this case. Mr. Oyedeki had been convicted of only three misdemeanor shoplifting offenses, two while a juvenile, and he posed no danger to the community and was not a flight risk. Mr. Abimbola, by contrast, was convicted of federal bank fraud and third degree larceny, which was determined to be an aggravated felony.

judicial stays of his removal are in effect, ICE will remove Mr. Abimbola expeditiously. The Court is aware that Mr. Abimbola has not always been completely forthcoming in his disclosures regarding the pendency of actions in the various courts. If Mr. Abimbola takes steps to remove all existing judicial stays, and can demonstrate and document – beyond his mere assertion – that no judicial stays are still in place, he may renew his petition in the District of his confinement if Respondents have not removed him to Nigeria within a reasonable period of time after all judicial stays have been dissolved.

Because the Court has denied Mr. Abimbola's habeas petition, the following eleven motions are all DENIED AS MOOT: (1) Petitioner's Motion for Copy of Petition [doc. #2]; (2) Petitioner's Motion to Reassign Case [doc. #2]; (3) Petitioner's Motion for Leave to Proceed *in forma pauperis* [doc. #4]; (4) Petitioner's Motion to Expedite [doc. #5]; (5) Petitioner's Motion for Copy of Habeas Corpus and Docket Sheet [doc. #5]; (6) Petitioner's Motion to Expedite [doc. #7]; (7) Petitioner's Motion for Default Entry 55(a) [doc. #9]; (8) Petitioner's Motion for Default Judgment [doc. #9]; (9) Petitioner's Motion for Preliminary Injunction [doc. #9]; (10) Petitioner's Motion for Directing his Release Pending final Adjudication Order [doc. #14]; (11) Petitioner's Motion for Judicial Intervention [doc. #15].

IT IS SO ORDERED.

/s/ Mark R. Kravitz  
United States District Judge

**Dated at New Haven, Connecticut: March 7, 2005.**