

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CLAUDIOUS CHANNER :
 :
 v. : Case No. 3:01cv876 (SRU)
 :
 IMMIGRATION AND :
 NATURALIZATION SERVICE, ET AL :

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Claudious Channer is a native and citizen of Jamaica, who was admitted to the United States as an immigrant on December 23, 1980. On January 9, 1990, Channer was convicted in Federal District Court of using and carrying a firearm during a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). He was sentenced to a five-year jail term.

On November 29, 1990, Channer was convicted in Connecticut Superior Court of robbery in the first degree and conspiracy to commit robbery in the first degree. On February 21, 1991, Channer was sentenced to twenty years' imprisonment on these state charges. The sentence was to be served consecutively with the federal sentence.

On November 16, 1993, the Immigration and Naturalization Service ("INS") initiated proceedings to deport Channer as an aggravated felon due to his federal conviction. On January 31, 1994, Channer was given "jail credits" and released from his federal sentence. Channer was then handed over to INS custody in Louisiana. On February 7, 1994, Channer was ordered deported. Channer appealed the deportation order on February 14, 1994. On February 28, 1994, Channer

withdrew his appeal and requested to be deported immediately. On March 3, 1994, the Judge recognized Channer's request and the appeal was abandoned. On March 21, 1994, Channer was transferred to Connecticut prison to begin a sentence of twenty years' imprisonment.

On April 21, 1994, Channer filed a Motion to Reopen Appeal, arguing that he thought he would be deported to Jamaica, not sent to a Connecticut prison, following abandonment of his appeal. The Motion to Reopen was denied on May 12, 1994.

On June 22, 1998, Channer's federal sentence was vacated by the District Court after it was determined that a witness perjured himself. On August 13, 1998, the INS filed a Motion to Reopen and a Motion to Terminate prior deportation action due to the vacated sentence. On August 26, 1998, Judge Reese granted the motions and terminated deportation. On February 11, 1999, a second deportation proceeding commenced, based on the state court conviction. On April 16, 1999, the immigration judge ordered Channer deported. On November 8, 1999, the Board of Immigration Appeals denied Channer's appeal, which was based on the doctrine of res judicata. Channer filed the instant petition on May 15, 2001.

Channer has petitioned for a writ of habeas corpus and moved for summary dismissal of his deportation order on the grounds that: (1) the INS was time barred from initiating a deportation proceeding against him for his 1990 state conviction for robbery and conspiracy to commit robbery; (2) the INS should have been precluded from commencing a deportation proceeding against him more than four years after his 1990 conviction and final order; (3) a civil statute of limitations governs contracts between the United States and its alien citizens; and (4) the INS knew or should have known of Channer's state conviction as early as May 20, 1991, when the first detainer was lodged against him,

and therefore, is barred by res judicata from deporting him on grounds that could have been included in his initial deportation proceedings.

DISCUSSION

Subject Matter Jurisdiction

“Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.” 28 U.S.C. § 2241(a). Before a court may grant a writ of habeas corpus, the petitioner must be in the custody of the respondent. 28 U.S.C. § 2241(c); see also Deutsch v. United States, 943 F. Supp. 276, 278 (W.D.N.Y. 1996); Andriianov v. Meisner, 1998 WL 106239 at *3 (N.D.N.Y. 1998); Santana v. Giambruno, 1998 WL 295666 at *3 (N.D.N.Y. 1998).

Here, the respondent on the habeas claims relating to Channer’s deportation order is the INS, yet Channer is currently in the custody of the State of Connecticut. Because Channer has filed this petition seeking habeas relief from the INS, rather than the State of Connecticut, this court lacks jurisdiction to review Channer’s habeas petition insofar as it relates to actions taken by the INS.

Channer’s State Claims

In addition to his habeas petition, Channer has also submitted a motion for summary dismissal of his deportation proceedings. Channer’s motion requests dismissal of his deportation proceeding and release from state custody. Because submissions by *pro se* litigants are to be construed liberally, see, e.g., Taylor v. Vermont Dept. of Educ., 313 F.3d 768, 776 (2d Cir. 2002) (“Since most *pro se* plaintiffs lack familiarity with the formalities of pleading requirements, we must construe *pro se* complaints liberally.”) (internal quotations omitted), the claims presented in Channer’s motion for

summary dismissal will be treated as an amended petition for habeas relief insofar as those claims pertain to state custodial issues.¹

In his motion for summary dismissal, Channer contends that he is being falsely imprisoned by the State of Connecticut. Channer was in state custody in January 1990 when the State delivered him to the INS for deportation proceedings. Thereafter, the INS returned Channer to state custody on March 22, 1994. Channer contends that the State relinquished its rights over him upon delivering him to immigration officials in 1990, therefore the INS improperly returned him to state custody in 1994.

There is nothing in the record to suggest that the State relinquished its rights over Channer when it delivered him to the INS for deportation proceedings. Moreover, it is well settled that the state does not relinquish primary jurisdiction over a prisoner when it temporarily transfers the prisoner to federal authorities for federal proceedings. See United States v. Gonzalez, 1998 WL 691080 at *3 (S.D.N.Y. 1998) (citing Thomas v. Brewer, 923 F.2d 1361, 1367 (9th Cir. 1991)). Accordingly, Channer's claim lacks merit and is insufficient to warrant habeas relief.

¹ It should be noted that Channer filed two previous habeas petitions pertaining to his state criminal proceedings. In the first petition, Channer asserted that the state court made unreasonable determinations of fact and left key facts undeveloped during a post-conviction hearing at which the Court declined to order a new trial in the wake of a witness's admission that he had perjured himself. The federal habeas court denied the petition in an opinion filed on January 25, 2001, Channer v. Brooks, 2001 WL 34056850 (D. Conn. 2001), and affirmed that denial on reconsideration, Channer v. Brooks, No. 3:99 CV 1707 (AWT)(DFM) (D. Conn, July 19, 2001).

On December 29, 2000, Channer brought another federal habeas petition challenging his state court conviction on other grounds. On January 23, 2001, that petition was denied for failure to exhaust state court remedies, Channer v. Brooks, 2001 WL 91601 (D. Conn. January 23, 2001), aff'd on reconsideration, 2001 WL 1094964 (D. Conn. Sept. 10, 2001).

Based on our understanding of these previous petitions, Channer is not now seeking to relitigate claims previously denied on the merits. Accordingly, it appears the court has jurisdiction to consider his present claim.

CONCLUSION

For the reasons stated above, the petitioner's request for a writ of habeas corpus insofar as it relates to the INS is DISMISSED. The petitioner's motion for summary dismissal is DENIED.

Furthermore, a certificate of appealability will not issue because Channer has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The clerk shall close the file.

SO ORDERED this _____ day of March 2003 at Bridgeport, Connecticut.

Stefan R. Underhill
United States District Judge