

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JEAN CARSON REMY, : 3:03cv2245(WWE)  
Petitioner, :  
 :  
v. :  
 :  
JOHN ASHCROFT, ATTORNEY :  
GENERAL, JAMES W. ZIGLAR, :  
COMMISSIONER OF THE :  
BUREAU OF IMMIGRATION :  
AND CUSTOMS ENFORCEMENT :  
("BICE"); :  
STEVEN FARQUHARSON, :  
BICE-DISTRICT DIRECTOR :  
CONNECTICUT; JOHN P. WEISS, :  
BICE-OFFICER IN CHARGE :  
HARTFORD SUB-OFFICE; :  
CHRISTINE G. DAVIS, :  
DISTRICT OF LOUISIANA; UNITED :  
STATES DEPARTMENT OF JUSTICE; :  
and THE BUREAU OF IMMIGRATION :  
AND CUSTOMS ENFORCEMENT<sup>1</sup>, :  
Respondents. :

RULING ON MOTION TO DISMISS

The Petitioner, Jean Carson Remy, filed this petition for habeas corpus relief from deportation. He is presently confined at a detention center in Louisiana. The respondents are John Ashcroft, James W. Ziglar, Steven Farquharson, John

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<sup>1</sup>In his amended/supplemental response in opposition to the government's motion to dismiss, petitioner states that he has added "Tom Ridge as a party respondent due to the recent amendment by the Homeland Security Act transferring some functions of the INS to DHS." The Court does not consider the petition to be amended by this amended/supplemental response. The Court instructs the petitioner to file a motion to amend the petition to add Tom Ridge as a respondent.

Weiss, Christine Davis, the United States Department of Justice, and the BICE.

Respondents move to dismiss the petition, arguing that petitioner has failed to name the proper respondent, and that the Court lacks jurisdiction over that proper respondent. In the alternative, respondents argue that the petition should be transferred to the Western District of Louisiana pursuant to 28 U.S.C. Section 1404(a).

For the following reasons, the motion to dismiss or for transfer will be denied.

#### **BACKGROUND**

Petitioner is a citizen of Haiti. He entered the United States as a Lawful Permanent Resident ("LPR") on February 21, 1993.

In April, 2001, petitioner was convicted in Massachusetts for the offense of assault and battery, and as result of that conviction, he was sentenced to prison for one year. Based upon that conviction, removal proceedings were instituted against petitioner. On June 24, 2003, an immigration judge found petitioner removable because his conviction constituted a crime of violence. On December 8, 2003, the Board of Immigration Appeals ("BIA") affirmed the IJ's decision and dismissed petitioner's appeal.

On December 24, 2003, petitioner filed the instant habeas

petition.

## **DISCUSSION**

### **A. Proper Custodian**

Respondents argue that petitioner should have filed this habeas petition against his immediate custodian in Louisiana rather than against the Attorney General. Specifically, respondents assert that BICE's District Director for the Western District of Louisiana is the proper habeas respondent in this case.

In Murray v. Ashcroft, 2004 WL 231419 (D. Conn. 2004), this Court considered whether the Attorney General could be the proper respondent in a Section 2241 habeas petition for relief from deportation. In that case, the Court held the Attorney General was the proper respondent given the need for a flexible, practical approach to determining the proper custodian of immigration detainees. Upon review, the Court is not persuaded that departure from its holding in Murray is warranted. Accordingly, the Court finds that the Attorney General is the proper respondent to this petition and will deny the motion to dismiss.

### **B. Motion to Transfer**

Respondents argue, in the alternative, that the Court should transfer the petition to the Western District of Louisiana.

Strict application of the venue doctrine will serve to constrain any forum shopping on the part of aliens who choose to name the Attorney General. See Henderson v. INS, 157 F. 3d 106, 127-28 (2d Cir. 1998). The three factors to be considered in determining venue are (1) where all the material events took place; (2) where the records and witnesses pertinent to petitioner's claim are likely to be found, and (3) the relative convenience of the forum for the parties. Walters v. Ashcroft, 291 F. Supp. 2d 237, 244 (S.D.N.Y. 2003). Motions for transfer are determined upon notions of convenience and fairness on a case-by-case basis. Publicker Indus. Ins. v. United States, 980 F. 2d 110, 117 (2d Cir. 1992).

In the present case, the crimes for which petitioner was ordered deported were committed in Massachusetts, and he served his sentence in Massachusetts. Petitioner's family moved to Connecticut during petitioner's incarceration in Massachusetts.

Petitioner's removal proceedings before the IJ took place in Louisiana, during which time petitioner was detained in Louisiana.

None of the events relevant to petitioner's deportation took place in Connecticut. The records concerning petitioner's underlying crime and his deportation proceedings

are found in either Massachusetts or Louisiana, although these materials could be easily sent to Connecticut.

However, witnesses residing in Massachusetts would be severely inconvenienced by venue in the Western District of Louisiana. Petitioner's family members residing in Connecticut are witnesses for whom Connecticut provides a convenient forum. These witnesses may be necessary to provide information relative to petitioner's underlying conviction or his immigration status. At the same time, witnesses to petitioner's deportation proceedings would be inconvenienced by travel from the Western District of Louisiana to Connecticut. However, it is unlikely that these witnesses would be necessary, since the transcript of the proceedings and other relevant records can be sent to Connecticut.

Petitioner is currently incarcerated within Louisiana, but this Court does not anticipate requiring his presence in Connecticut. Respondents do not argue that Connecticut presents an inconvenience to the Attorney General.

Accordingly, the balance of the factors weighs against transfer to the Western District of Louisiana, and the Court defers to the petitioner's choice of venue.

#### CONCLUSION

Based on the foregoing, respondents' motion to dismiss [doc. #7] is DENIED. Respondents should file their brief

addressing the merits of the petition for relief by June 21,  
2004.

The Court concludes that justice requires the appointment  
of counsel for the petitioner in this petition for writ of  
habeas

corpus. The Clerk's office is directed to appoint an attorney from the CJA panel to represent the petitioner.

SO ORDERED.

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Warren W. Eginton  
Senior United States District

Judge

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