

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Labrada-Cruz :  
 :  
v. : No. 3:02cv2222 (JBA)  
 :  
Strange et al. :

Ruling on Petition Under § 2241

Maikel Labrada-Cruz, an alien under final order of removal by virtue of his status as an aggravated felon, has filed this petition for writ of habeas corpus, claiming relief under the Convention Against Torture ("CAT").<sup>1</sup> For the reasons set out below, the petition is denied.

I. Factual Background

Labrada-Cruz is a citizen and native of Cuba who was paroled into the United States in 1994 and became a lawful permanent resident in 1996. In 2000, he was convicted of first degree assault in violation of Conn. Gen. Stat. § 53a-59(a)(2),<sup>2</sup> and was

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<sup>1</sup>Convention against torture and other cruel, inhuman or degrading treatment or punishment, 23 I.L.M. 1027 (1984), as modified 24 I.L.M. 535 (1985); adopted by the U.N. General Assembly Dec. 10, 1984, entered into force June 26, 1987, ratified by United States Oct. 21, 1994, 34 I.L.M. 590, 591 (1995), and entered into force for the U.S. Nov. 20, 1994. Article 3 of the Convention provides: "No State Party shall ... extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

<sup>2</sup>"A person is guilty of assault in the first degree when . . . with intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a

sentenced to an eight year term of imprisonment. By Notice to Appear dated April 11, 2000, the INS commenced removal proceedings against Labrada-Cruz, contending that he was removable as an aggravated felon under 8 U.S.C. § 1227(a)(2)(A)(iii). At the hearing before the Immigration Judge ("IJ") on May 10, 2002, a record of the state assault conviction were accepted into evidence and the only issue raised was Labrada-Cruz's contention that he is entitled to withholding of removal under the CAT.

At the hearing, Labrada-Cruz testified that he was born in Cuba on December 3, 1975, in the countryside. He went to school until the 10th grade, then worked for four months in the kitchen of a hospital, and then at age 18 came to the United States in a boat with approximately one hundred others, to improve his economic situation. When he was sixteen he was arrested by the Cuban authorities for stealing a bicycle, which he denies doing, and was detained for ten days but not mistreated. He never joined the Communist party, never served in the Cuban army, and never openly criticized the Castro government, although he did testify that his emigration from Cuba was illegal. He testified as follows regarding his fear of torture if he is sent back to Cuba:

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member or organ of his body, he causes such injury to such person or to a third person . . . "

Q: Sir, if you go back to Cuba what do you think will happen?

A: What would happen? They're going to torture me, they're going to put me in jail.

Q: Why do you say that?

A: Because I don't know.

Q: What? You don't know?

A: I don't know.

Q: Why would they throw you in jail and torture you, sir?

A: Because I flee from Cuba. I betrayed.

Q: You're saying that everyone who leaves Cuba will be tortured?

A: I think so.

[discussion of Labrada-Cruz's arrest for the bicycle theft]

Q: So why do you think you would be mistreated if you were arrested again, sir?

A: Because what I hear from people.

Q: Who?

A: The Cubans themselves.

Q: What did they tell you exactly?

A: That I'm going to be in jail for my whole life and they're going to mistreat me.

[Doc. #11 Ex. F] at 51-53.

The IJ denied Labrada-Cruz's request for withholding of removal under the CAT. After recounting Labrada-Cruz's testimony, the IJ reviewed a State Department report on Cuba

(which had been introduced into evidence at the hearing). According the IJ, the report (which is not before the Court in this proceeding) reflects that Cuba is a totalitarian state tightly controlled by Castro and the communist party, any dissent is treated harshly, the government's human rights record is extremely poor, and human rights and pro-democracy activists are subject to physical violence by prison guards and state security officials. After noting that the burden of proof is on Labrada-Cruz to establish that it is more likely than not that he would be tortured if returned to Cuba,<sup>3</sup> the IJ concluded that there was no evidence in the record that non-politically active Cubans such as Labrada-Cruz who had fled the country illegally would be jailed upon return, and even if jail were possible, Labrada-Cruz had not established that merely being in jail constituted torture.

Labrada-Cruz appealed the IJ's decision to the Board of Immigration Appeals, which affirmed without opinion on November 21, 2002. He commenced this § 2241 petition on December 16, 2002. He states: "the immigration Department has a hold on the petitioner and the petitioner fears for his life if he is

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<sup>3</sup>See 8 C.F.R. § 208.16(c)(2) ("The burden of proof is on the applicant for withholding of removal under this paragraph to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.").

deported back to Cuba, and is asking this Court for relief under the U.N. convention against torture." Statement of Facts [attached to Doc. #2]. In response to the Court's order to show cause, the Government first argues that the Court has no jurisdiction over the petition because Labrada-Cruz is still in custody of the Connecticut Department of Corrections and has not been transferred to the custody of the INS, although a detainer has been lodged against him. In the alternative, the Government contends that Labrada-Cruz's his CAT claim fails as he has failed to prove that it is more likely than not that he will be tortured if returned to Cuba.

## II. Discussion

The Court has jurisdiction under 28 U.S.C. § 2241 to hear some challenges to final orders of deportation. INS v. St. Cyr, 533 U.S. 289, 314 (2001). While this jurisdiction requires that the petitioner be "in custody" of the respondent, see 28 U.S.C. § 2241(c), the Second Circuit has recently clarified that "a final order of removal is sufficient, by itself, to establish the requisite custody." Simmonds v. INS, 326 F.3d 351, 354 (2d Cir. 2003). Thus, the Government's assertion that the Court lacks jurisdiction to entertain Labrada-Cruz's petition is without

merit.<sup>4</sup>

The Second Circuit has recently taken an expansive view of federal courts' jurisdiction under § 2241 to consider the merits of CAT claims, concluding that a challenge to "application of the particular facts in [a] case to the relevant law falls within the permissible scope of habeas review." Wang v. Ashcroft, 320 F.3d 130, 143 (2d Cir. 2003).<sup>5</sup> Even under this standard, however, Labrada-Cruz's claim to relief under the CAT fails. The IJ was correct in his conclusion that there was no evidence in the record tending to show that non-politically active persons who had fled Cuba would be tortured if returned, other than Labrada-Cruz's admittedly unsupported conclusory assertions to that effect. Labrada-Cruz's § 2241 petition advances no additional evidence. In short, there is no basis for the Court to conclude that Labrada-Cruz has proven that it is more likely than not that he will be tortured if returned to Cuba.

### III. Conclusion

For the reasons set out above, the Petition [Doc. #2] is DENIED, and no stay of removal will issue. Any motion for stay

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<sup>4</sup>Simmonds was decided after the Government submitted its response to the Court's order to show cause.

<sup>5</sup>Wang thus appears to overrule this Court's earlier determination in Pickett v. INS, 237 F. Supp. 2d 175 (D. Conn. 2002), of the permissible scope of § 2241 review.

of removal and/or any appeal of this decision must be directed to the U.S. Court of Appeals for the Second Circuit, 40 Foley Square, New York, New York 10007. No Certificate of Appealability is required. Murphy v. United States, 199 F.3d 599, 601 n.2 (2d Cir. 1999). The Clerk is directed to close this case.

IT IS SO ORDERED.

/s/

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Janet Bond Arterton, U.S.D.J.

**Dated at New Haven, Connecticut, this 19th day of June, 2003.**