

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ERCIDO NUNEZ, :
 :
 Petitioner, :
 :
 V. : CASE NO. 3:03CV1224 (RNC)
 :
 IMMIGRATION AND :
 NATURALIZATION SERVICE, :
 :
 Respondent. :

RULING AND ORDER

Petitioner, a native and citizen of the Dominican Republic, is serving forty-five months in state prison for first-degree assault. The Immigration and Naturalization Service (INS) has placed a detainer on petitioner based on his aggravated felony conviction, but has not yet begun removal proceedings against him. Petitioner, proceeding pro se, seeks a writ of mandamus compelling the INS either to lift the detainer, or to hold a removal hearing on any claims it may have against him [Doc. #1]. Because petitioner has no clear right to this relief, the petition is denied.

I. Discussion

A writ of mandamus is available only when the applicant has a clear right to the relief sought, the respondent has a plainly defined duty to act, and no other remedy is available. Billiteri v. United States Bd. of Parole, 541 F.2d 938, 946 (2d Cir. 1976). Congress has specifically provided that the INS's authority to expedite removal proceedings for incarcerated aliens, an authority that covers detainers

and expedited removal hearings, is discretionary. 8 U.S.C. § 1228(a)(3)(B). A writ of mandamus is not available to compel such discretionary acts.

Petitioner also suggests that the effect of the detainer is to deny him the opportunity to participate in the Transitional Supervision ("TS") and Residential Program Placement ("RPP") programs. Petitioner has not shown, and the government denies, that a detainer automatically has that effect. The Second Circuit has found that a detainer issued by the INS regarding an alien incarcerated for an aggravated felony is simply a notification to the prison, and does not affect the prisoner's status. Waldron v. INS, 17 F.3d 511, 516 (2d Cir. 1994). In any case, petitioner cannot show that he has a clear right to participate in those programs, as required for a writ of mandamus, because placement in those programs is entirely discretionary. Conn. Gen. Stat. §§ 18-100(e), 100c.

II. Conclusion

Accordingly, the petition is hereby denied and the case is dismissed.

So ordered.

Dated at Hartford, Connecticut this ____ day of October 2003.

Robert N. Chatigny
United States District Judge