

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

DURANT BLAKE,  
Petitioner,

v.

ALBERTO GONZALEZ,  
Respondent.

CIVIL ACTION NO.  
3:05cv1285 (SRU)

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**RULING ON HABEAS CORPUS PETITION**

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Durant Blake ("Blake"), acting pro se, has filed a habeas corpus petition, claiming that he was denied his right to consular assistance under the Vienna Convention and that the immigration judge erroneously classified Blake's Massachusetts state conviction as an aggravated offense for purposes of making a removal determination.

The question arises whether Blake can proceed with his habeas petition in this court. Under the REAL ID Act, Pub. L. No. 109-13, § 106(a)(1)(B), 119 Stat. 231, 310-11 (May 11, 2005) (amending 8 U.S.C. § 1252), challenges to deportation orders cannot be brought by habeas corpus petition, but must be brought by petition for review in the court of appeals. Even after the passage of the REAL ID Act, a habeas petition can still be brought in the district court to challenge the legality of a defendant's conviction.

Based on the nature of his two claims, it does not appear that Blake challenges his underlying conviction for assault on a public official; rather, he challenges the procedures and decision of the immigration judge in making a determination to deport Blake. Blake, acting through his counsel, has already filed a petition for review with the Court of Appeals to address the final removal order. As a result, there is no purpose in transferring Blake's habeas corpus

petition to the Court of Appeals.

Because Blake's petition was not properly filed with this court, it is dismissed without prejudice to Blake's pending petition for review in the Court of Appeals and without prejudice to the filing of a petition for habeas corpus in the District of Massachusetts, should Blake decide to challenge the underlying Massachusetts state conviction.

Blake's habeas corpus petition (doc. # 1) is DISMISSED without prejudice.

It is so ordered.

Dated at Bridgeport, Connecticut, this 24<sup>th</sup> day of October 2005.

/s/ Stefan R. Underhill

Stefan R. Underhill

United States District Judge