

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

WINSTON DUNCAN,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 3:04 CV 1861 (MRK)
	:	
DEPARTMENT OF	:	
HOMELAND SECURITY	:	
AND BUREAU OF IMMIGRATION CUSTOM	:	
ENFORCEMENT,	:	
	:	
Respondents.	:	

**ORDER**

Before the Court is Petitioner Winston Duncan’s Petition for a Writ of Mandamus [doc. #1]. Although it is captioned as a *writ of mandamus*, Mr. Duncan asks this Court to prevent his possible deportation by the Bureau of Immigration and Custom Enforcement (BICE) because he believes that he has derived citizenship from his father Gladstone Duncan. Therefore, the Court will construe Mr. Duncan’s petition as a petition for *writ of habeas corpus*.

I.

Mr. Duncan was admitted to the United States on or about July 20, 1989. *See* Notice to Appear, Ex. A [doc. #7]. Less than six years later, on June 29, 1995, Mr. Duncan was convicted of Conspiracy to Sell Narcotics, in violation of Conn. Gen. Stat. § 53a-48 and § 21a-277(a). *Id.* As a result of his conviction, Mr. Duncan became deportable under Sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(B)(i), and the Immigration and Naturalization Service (INS) instituted removal

proceedings against him. *Id.* Mr. Duncan was subject to an INS detainer while he was incarcerated and as a result he was released into BICE custody on November 8, 2004. *See* Resp. at 2 [doc. # 7]. The Government has represented to the Court that Mr. Duncan is scheduled for a hearing before an Immigration Judge on December 15, 2004 and that he is not currently subject to a final order of removal.

## II.

In his petition, Mr. Duncan moves the Court to "Compel the INS-ICE to remove their detainer from the Petitioner's prison files." *See* Pet. at 2 [doc. #1]. At this time, Mr. Duncan has been released from state custody and taken into custody by the BICE. *See* Resp. at 2 [doc. #7]. Therefore he no longer is subject to an INS detainer and his request is moot in that regard. However, the Court construes Mr. Duncan's petition and his letter to the Court dated November 19, 2004 [doc. #8] more generally to be a request for relief from his potential deportation that will result if a final order of removal is entered in his case.

Mr. Duncan claims that his father, Gladstone Duncan, became a citizen on June 3, 1977, nine days before he was born. As a result, Mr. Duncan claims that he has derived citizenship from his father. Although Mr. Duncan has not submitted any evidence that supports this claim, it may well be true, and Mr. Duncan will have an opportunity to make this argument before an Immigration Judge at his hearing which is scheduled for December 15, 2004. If the Immigration Judge disagrees with Mr. Duncan and enters a final order of removal, Mr. Duncan is entitled to appeal to the Board of Immigration Appeals. If the BIA denies his appeal, Mr. Duncan may again petition the Court to review his final order of removal. *See* 8 U.S.C. § 1101 (explaining that a removal order becomes final when the BIA affirms the Immigration Judge's decision).

However, at this time, the Court lacks subject matter jurisdiction over Mr. Duncan's petition because Mr. Duncan has not even begun to exhaust his remedies. The INA requires an alien to exhaust all available administrative remedies before seeking judicial review. *See* 8 U.S.C. § 1252(d) (Supp. IV 1998); *Theodoropolous v. INS*, 358 F.3d 162, 171 (2d Cir. 2004)("[B]y its plain language, § 1252(d)'s mandate that unless a petitioner has exhausted all administrative remedies available, a court may [not] review a final order of removal, applies to all forms of review including habeas corpus."). Therefore, the Court DISMISSES Mr. Duncan's petition [**doc. #1**] as premature, without prejudice to renewal. **The Clerk is directed to close the file.**

IT IS SO ORDERED.

/s/ Mark R. Kravitz  
United Stated District Judge

Dated at New Haven, Connecticut: December 9, 2004.