



User Name: Andrea Jamison

Date and Time: Tuesday, September 26, 2017 11:43:00 AM CST

Job Number: 53979746

Document (1)

1. [Jaohar v. Cangemi, 2004 U.S. Dist. LEXIS 7185](#)

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Jaohar v. Cangemi

United States District Court for the District of Minnesota

April 23, 2004, Decided

Civil No. 04-1025 (JRT/FLN)

Reporter

2004 U.S. Dist. LEXIS 7185 *; 2004 WL 898774

FOUAD JAOHAR, Petitioner, v. MARK CANGEMI, District Director, U.S. Immigration and Customs Enforcement; BILL ADAMS, Interim District Director, U.S. Citizenship & Immigration Services (CIS); TOM RIDGE, Secretary, Department of Homeland Security, and JOHN ASHCROFT, United States Attorney General, Respondent.

Disposition: [*1] Petition for a writ of habeas corpus was DISMISSED with prejudice. Petitioner's motion for court order directing Department of Homeland Security to return petitioner to United States was DENIED.

Core Terms

removal order, Immigration, conditional, alien, removal

Case Summary

Procedural Posture

Petitioner alien filed an emergency motion for a writ of habeas corpus requesting that respondent government officials return him from Morocco so that he could assist in the prosecution of his habeas petition.

Overview

The Immigration and Customs Enforcement (ICE) found that the alien was deportable because he had been convicted of an aggravated felony pursuant to [8 U.S.C.S. § 1227\(a\)\(2\)\(A\)\(iii\)](#). The alien's petition for review to the United States Court of Appeals for the Eighth Circuit was dismissed in accordance with *Fed. R. App. P. 42(b)*. The alien filed a habeas petition while he was in the custody of ICE and was detained in a jail. Despite the petition, he was deported to his native country Morocco. He requested that the government return him from Morocco so that he could assist in the prosecution of his habeas petition. The court held that Congress had divested the courts of jurisdiction to

review the removal orders of criminal aliens pursuant to *8 U.S.C.S. § 1252(a)(2)(C)*. Because the issues the alien raised in the habeas petition were the same claims that had been litigated in the Eighth Circuit, that court's dismissal of his case in two sentences was binding on the court.

Outcome

The court denied the alien's petition for a writ of habeas corpus with prejudice and denied his motion for a court order directing the government to return the alien to the United States.

LexisNexis® Headnotes

Immigration Law > Deportation & Removal > Administrative Proceedings > Jurisdiction

Immigration Law > ... > Grounds for Deportation & Removal > Criminal Activity > General Overview

Immigration Law > Judicial Proceedings > Jurisdiction

Immigration Law > Judicial Proceedings > Judicial Review > Scope of Review

[HN1](#) [↓] **Administrative Proceedings, Jurisdiction**

Congress has divested the courts of jurisdiction to review the removal orders of criminal aliens. *8 U.S.C.S. § 1252(a)(2)(C)*.

Immigration Law > ... > Grounds for Deportation & Removal > Criminal Activity > General Overview

Immigration Law > Deportation &
Removal > Administrative
Proceedings > Jurisdiction

Immigration Law > Judicial Proceedings > Judicial
Review > Scope of Review

[HN2](#) **Grounds for Deportation & Removal, Criminal Activity**

See 8 U.S.C.S. § 1252(a)(2)(C).

Governments > Federal Government > Domestic
Security

Immigration Law > ... > Grounds for Deportation &
Removal > Criminal Activity > General Overview

Immigration Law > Judicial Proceedings > Judicial
Review > Scope of Review

[HN3](#) **Federal Government, Domestic Security**

If an alien brings a challenge to a removal order, the Eighth Circuit must first determine the preliminary jurisdictional facts. Namely, the Eighth Circuit must determine that the petitioner is an alien, and has been convicted of an aggravated felony.

Immigration Law > Judicial Proceedings > Judicial
Review > Scope of Review

[HN4](#) **Judicial Review, Scope of Review**

A jurisdictional determination is binding as to issues that are addressed by the court in determining the jurisdictional question.

Counsel: Herbert A. Igbanugo, BLACKWELL IGBANUGO, Minneapolis, MN, for petitioner.

Joan D. Humes, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Minneapolis, Minnesota, for respondent.

Judges: JOHN R. TUNHEIM, United States District Judge.

Opinion by: JOHN R. TUNHEIM

Opinion

ORDER

Petitioner Fouad Jaouhar ("petitioner") filed an "Emergency Petition" for a writ of habeas corpus on February 24, 2004; at the time the petition was filed, petitioner was in the custody of the ICE (Immigration and Customs Enforcement, a part of the Department of Homeland Security) and was detained in the Washington County Jail. Despite this petition, he was deported to his native country Morocco on March 3, 2004. He now requests that the government return him from Morocco so that he can assist in the prosecution of his habeas petition. For the reasons discussed below, the Court denies petitioner's request, and dismisses the petition for a writ of habeas corpus.

[*2] BACKGROUND

Petitioner entered the United States on a visitor's visa on May 5, 1994. He married his wife, who is a United States citizen, on August 12, 1994. In September of 1994, he applied to adjust his status to lawful permanent resident, and that was approved on September 25, 1995. In June of 1996, the United States Marshals Service arrested petitioner, and he was eventually extradited to Switzerland. Though petitioner was not tried for the offense for which he was extradited, he was tried and convicted for criminal conduct from 1988. From December 22, 1996, to December 31, 1998, he was detained in Switzerland.

On December 31, 1998, he re-entered the United States on a visitor's visa. Petitioner and his wife then filed a joint petition to remove the conditions on residence. A hearing was scheduled regarding the petition to remove the conditions on residence. Petitioner's wife was required to be at the hearing, but due to a medical emergency she was hospitalized and could not attend the hearing. Petitioner asserts that the District Adjudications Officer told him the interview would be rescheduled for good cause. On April 4, 2000, however, petitioner received a letter from [*3] the Minnesota district office of the Citizenship & Immigration Services terminating his employment authorization and conditional status. Despite the termination letter, petitioner continued to believe he was a conditional permanent resident because his conditional permanent residence card had been renewed every year since April

2000. In addition, he had left and re-entered the country at least four times as a conditional permanent resident.

In October 2003, however, immigration officers took petitioner into custody, and issued a Notice of Intent to Issue a Final Administrative Order. The Notice indicated that petitioner was subject to mandatory detention because he had been convicted in Switzerland of a felony. Petitioner's request for a bond hearing was denied. Petitioner's challenge to the Notice of Intent to Issue a Final Administration Removal Order was also unsuccessful and on November 14, 2003, the Bureau of Immigration and Customs Enforcement ("ICE") issued a Final Administrative Removal Order on November 14, 2003. The ICE found that the administrative record established by clear, convincing and unequivocal evidence that he was deportable as an alien convicted of an aggravated [*4] felony pursuant to INA § 238(a)(2)(A)(iii), [8 U.S.C. 1227\(a\)\(2\)\(A\)\(iii\)](#).

Petitioner requested an additional bond re-determination, which was denied by the Immigration Judge because the Immigration Judge determined he had no authority to review bond determinations where the alien was in proceedings pursuant to [§ 238](#). Petitioner then filed a petition for review with the Eighth Circuit Court of Appeals, asking the Circuit Court to stay the removal and to review the November 14, 2003 Final Administrative Removal Order. The Eighth Circuit dismissed the appeal in accordance with *Federal Rules of Appellate Procedure 42(b)*, and denied as moot his motion for a stay. This judgment was entered on January 29, 2004.

As noted above, petitioner had been in custody since October 2003. He was on notice of removal since at least November 11, 2003 when he was issued a Final Administrative Removal Order. He filed this petition in February 2004. Petitioner did not move for a temporary restraining order. Shortly after his removal, petitioner filed a motion requesting the Department of Homeland Security be directed to return him to the United [*5] States.

ANALYSIS

The issues petitioner raises in the instant habeas petition are the same claims that have been litigated in the Eighth Circuit. ¹ [HN1](#) Congress has divested the

courts (including this Court) of jurisdiction to review the removal orders of criminal aliens. *8 U.S.C. § 1252(a)(2)(C)* ([HN2](#)) "Notwithstanding any other provision of law, **no court** shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in *section 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D)* of this title, or any offense covered by *section 1227(a)(2)(A)(ii)* of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by *section 1227(a)(2)(A)(i)* of this title." (emphasis added).

[*6] [HN3](#) If an alien brings a challenge to such a removal order, the Eighth Circuit must first determine the preliminary jurisdictional facts. [Gavilan-Cuate v. Yetter, 276 F.3d 418 \(8th Cir. 2002\)](#); [Santos v. Reno, 228 F.3d 591 \(5th Cir. 2000\)](#); [Beshli v. Department of Homeland Security, 272 F. Supp. 2d 514, 521 \(E.D. Pa. 2003\)](#). Namely, the Eighth Circuit must determine that the petitioner is an alien, and has been convicted of an aggravated felony. *Id.* Petitioner suggests that there is no way of knowing what the Eighth Circuit decided, because the two sentence judgment simply dismissed the case. However, that is the same procedural background as occurred in *Gavilan-Cuate*, where the Eighth Circuit noted that [HN4](#) "a jurisdictional determination . . . is binding as to issues that are addressed by the Court in determining the jurisdictional question." [Gavilan-Cuate v. Yetter, 276 F.3d at 420](#).

The Eighth Circuit's determination is binding on this Court. Therefore, plaintiff's petition must be dismissed.

ORDER

Based on the submissions of the parties, the arguments of counsel, and the entire file and proceedings herein, [*7] **IT IS HEREBY ORDERED** that:

1. The petition for a writ of habeas corpus [Docket No. 1] is **DISMISSED with prejudice**.
2. Petitioner's motion for court order directing Department of Homeland Security to return petitioner to the United States anon [Docket No. 7] is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

the Supreme Court's decision in [Zadvydas v. Davis, 533 U.S. 678, 150 L. Ed. 2d 653, 121 S. Ct. 2491 \(2001\)](#) and that continued detention violated his substantive due process rights. That claim is now moot, and will not be addressed in this opinion and order.

¹ In Counts I and II of the habeas petition, petitioner asserted that he should be released pending deportation, pursuant to

DATED: April 23, 2004

at Minneapolis, Minnesota.

JOHN R. TUNHEIM

United States District Judge

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