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Date and Time: Tuesday, September 26, 2017 11:41:00 AM CST

Job Number: 53979424

Document (1)

1. [*Raffington v. Cangemi, 2004 U.S. Dist. LEXIS 25824*](#)

Client/Matter: -None-

Search Terms: 2004 U.S. Dist. LEXIS 25824

Search Type: Natural Language

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Raffington v. Cangemi

United States District Court for the District of Minnesota

December 17, 2004, Decided

Civil No. 04-3846 (JRT/RLE)

Reporter

2004 U.S. Dist. LEXIS 25824 *; 2004 WL 2980218

SHERNETH RAFFINGTON, Petitioner, v. MARK CANGEMI, District Director, U.S. Immigration & Customs Enforcement; THOMAS RIDGE, Secretary, Department of Homeland Security; and JOHN ASHCROFT, United States Attorney General, Respondents.

Prior History: [Raffington v. Cangemi, 2004 U.S. Dist. LEXIS 21634 \(D. Minn., Oct. 22, 2004\)](#)

Disposition: Petitioner's motion for release pending appeal denied.

Core Terms

pending appeal, removal, likelihood of success, irreparable harm, merits, pending resolution, habeas petitioner, motion for a stay, confinement, analyzed, equities, custody, factors, argues

Case Summary

Procedural Posture

After denial of her habeas petition, petitioner alien moved for release pending resolution of her appeal pursuant to *Fed. R. App. P. 23(b)*.

Overview

The alien sought release from custody so that she could settle her personal affairs, e.g., emptying her apartment and selling her car, in preparation for possibly losing her appeal. Although there was no doubt that she would have benefited from being able to deal with her personal belongings before being deported, not being able to do so did not give rise to irreparable harm in this case. The alien also seemed to argue that her confinement lead to continued mental decline. However, she offered little support for the assertion that her confinement was pushing her closer to the brink of suicide or that her

release would mitigate that decline. Further, the potential burden on the government was great. In light of the court's denial of the alien's petition for writ of habeas corpus, if she were released, the government, at a minimum, would be required to monitor her whereabouts.

Outcome

The motion was denied.

Counsel: [*1] Herbert A. Igbanugo, BLACKWELL IGBANUGO, Minneapolis, MN, for petitioner.

Lonnie F. Bryan, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, Minneapolis, MN, for respondents.

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

Opinion by: JOHN R. TUNHEIM

Opinion

ORDER DENYING MOTION FOR RELEASE PENDING APPEAL

Sherneth Raffington ("petitioner" or "Raffington") is a removable alien in the custody of Immigration & Customs Enforcement ("ICE"). On October 6, 2004, the Court denied her Petition for Writ of Habeas Corpus, and on October 18, 2004, the Court denied her request for permission to file a motion to reconsider. Petitioner then moved for a stay of her removal pending resolution of her appeal to the Eighth Circuit Court of Appeals. The Court granted a stay on October 22, 2004. Petitioner now moves for release pending resolution of her appeal pursuant to *Federal Rule of Appellate Procedure 23(b)*.

Petitioner argues that, as when considering a motion for a stay of a civil proceeding, the Court must balance the

following four factors: likelihood of success on the merits; irreparable injury to the movant; injury to opposing party; and public interest. See *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 112 (8th Cir. 1981). [*2] The government asserts that this standard is used when analyzing motions of *successful* habeas petitioners under Rule 23(c). See *Hilton v. Braunschweig*, 481 U.S. 770, 774-76, 95 L. Ed. 2d 724, 107 S. Ct. 2113 (1987). Instead, the government argues, an unsuccessful habeas petitioner, such as Raffington, must raise "substantial constitutional claims upon which [she] has a high probability of success" and must show that "exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective." *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992). The Court finds that, even under the lower standard put forth by the petitioner, relief is inappropriate in this case.

The Court analyzed the four factors for granting a stay in its October 22 Order granting petitioner's motion for stay pending appeal. In that Order the Court discussed the significant irreparable harm the petitioner would face if she were removed from the United States while her appeal was pending only to eventually succeed on her appeal. The Court compared that harm to the relatively small burden the government would face by being prohibited from removing her pending the appeal. The Court [*3] also discussed the difficulty in assessing petitioner's likelihood of success on the merits, but ultimately found that the "equities so favor[ed] the petitioner" that a stay of removal was appropriate.

The equities are much less favorable to the petitioner in this case. Here the petitioner seeks release from custody so that she can settle her personal affairs, e.g. emptying her apartment and selling her car, in preparation for possibly losing her appeal. Although there is no doubt that petitioner would benefit from being able to deal with her personal belongings before being deported, not being able to do so does not give rise to irreparable harm in this case. Petitioner also seems to argue that her confinement has lead to continued mental decline. Petitioner, however, offers little support for the assertion that her confinement is pushing her "closer to the brink of suicide" or that her release would mitigate that decline. Further, the potential burden on the government is greater in this case than in the prior motion for a stay of removal. In light of this Court's denial of Raffington's Petition for Writ of Habeas Corpus, if petitioner is released, the government, at a minimum, [*4] will be required to monitor her whereabouts.

In sum, the Court finds that petitioner's questionable likelihood of success on the merits, the lack of irreparable harm to petitioner from a denial, and the increased burden to the government weigh against granting petitioner's motion. The Court therefore denies petitioner's motion for release pending appeal.

ORDER

Based on the submissions and the entire file and proceedings herein, **IT IS HEREBY ORDERED** that petitioner's Motion for Release Pending Appeal [Doc. No. 77] is **DENIED**.

DATED: December 17, 2004

at Minneapolis, Minnesota.

JOHN R. TUNHEIM

United States District Judge

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