

In his Petition, Petitioner asks the Court to order that he be taken into INS (BICE) custody and that he be granted discretionary relief under the INA § 212(c).

The Court then ordered Respondent to show cause why the relief prayed for in the Petition should not be granted.

In its response to the Order to Show Cause, INS states that this Court lacks subject matter jurisdiction as Petitioner failed to exhaust his administrative remedies. Additionally, this Court lacks jurisdiction to order the State Court to transfer Petitioner to INS custody prior to the completion of his state sentence.

As the Government correctly points out, this Court may only review a final order of deportation if the alien has exhausted all of his administrative remedies. 8 U.S.C. § 1252(d); Theodoropoulos v. INS, 358 F.3d 162, 169-71 (2d Cir. 2004). Here, there is no indication that Petitioner ever appealed the Immigration Judge's order, and the time for filing such an appeal has clearly run. Further, "the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment." 8 U.S.C. § 1231(a)(4)(A). Therefore, until such time as Petitioner completes his state sentence, this Court does not have the authority to order that he be transferred to the custody of the INS. See Duamutef v. INS, No. CV-02-1345, 2003 WL 21087984 (E.D.N.Y. May 14, 2003) (holding

that, where alien was not yet in INS custody, district court lacked habeas jurisdiction).

Accordingly, the Petition for Writ of Habeas Corpus is DENIED, and the Clerk is directed to close this file.

SO ORDERED.

Date: May 19, 2004.
Waterbury, Connecticut.

_____/s/_____
GERARD L. GOETTEL,
United States District Judge