UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DAVID BISPHAM,	:	
Petitioner	:	
	:	
v.	:	Civil Action No.
	:	3:03cv58 (CFD)
IMMIGRATION AND	:	
NATURALIZATION SERVICE,	:	
Respondent	:	

RULING ON HABEAS CORPUS PETITION

Pending is the petitioner's pro se petition for writ of habeas corpus [Doc. #1].[1] Petitioner claims that he is being held contrary to Zadvydas v. Davis, 533 U.S. 678 (2001) and should be released. The respondent has filed an opposition to the petition for habeas corpus, claiming that (1) this court lacks jurisdiction over the respondent Immigration and Naturalization Service; (2) this court lacks jurisdiction because the petitioner is in state, rather than INS, custody; and (3) Zadvydas is inapplicable to this case. For the reasons below, the petition for writ of habeas corpus is DENIED.

I. Background

The petitioner, David Bispham, is a citizen and native of Barbados. He entered the United States on April 12, 1987. On March 5, 1996, Bispham was convicted in the Connecticut Superior Court of sexual assault in the first degree, sexual assault in the second degree, and risk of injury to a minor in violation of various Connecticut statutes and sentenced to twenty years in prison, execution suspended after fifteen years, and five years' probation.

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[1]The Court assumes that the petition was filed under 28 U.S.C. § 2241.

The Immigration and Naturalization Service ("INS")[2] subsequently commenced removal proceedings against Bispham while he was serving his state sentence. On October 3, 2001, an Immigration Judge ("IJ") ordered Bispham removed to Barbados. The Board of Immigration Appeals ("BIA") affirmed the IJ's ruling and the order became final. The INS then lodged a detainer with the State of Connecticut Enfield Correctional Center where Bispham was, and is presently, incarcerated. On September 5, 2002, Bispham was "conditionally paroled to his INS detainer" for removal purposes.[3] See Resp. to Order to Show Cause at 3 & Ex. H. However, Bispham is still serving his

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[2]On March 1, 2003, the INS's functions were transferred from the Department of Justice into the Department of Homeland Security.

[3]Section 54-125d of the Connecticut General Statutes provides for the parole of alien prisoners for deportation and states that:

> (a) The Board of Parole shall enter into an agreement with the United States Immigration and Naturalization Service for the deportation of parolees who are aliens as described in 8 U.S.C. § 1252a(b)(2) and for whom an order of deportation has been issued pursuant to 8 U.S.C. § 1252(b) or 8 U.S.C. § 1252a(b).
> (b) The Department of Correction shall determine those inmates who shall be referred to the Board of Parole based on intake interviews by the department and standards set forth by the United States Immigration and Naturalization Service for establishing immigrant status.
> (c) Notwithstanding the provisions of subdivision (2) of subsection (b) of section 54-125a, any person whose eligibility for parole is restricted under said subdivision shall be eligible for deportation parole under this section after having served fifty per cent of the definite sentence imposed by the court.
> (d) Notwithstanding any provision of the general statutes, a sentencing court may refer any person convicted of an offense other than a capital felony or a class A felony who is an alien to the Board of Parole for deportation under this section.
> (e) Any person who is approved for deportation under this section shall have his sentence placed in a hold status for a period of ten years. If the parolee reenters the United States within such ten-year period, he shall be in violation of his parole agreement, the remainder of his sentence shall be reinstated and he shall be ineligible for parole consideration.
> (f) Any person approved for deportation parole shall not be eligible for any form of bond whether by the state or the federal government. Any person approved for deportation parole shall be transferred to the United States Immigration and Naturalization Service for deportation

Connecticut sentence and concedes that his discharge date on his state sentence is not earlier than November 2003.

Bispham filed the instant petition for writ of habeas corpus on January 9, 2003.

II. Discussion

The general habeas corpus statute, 28 U.S.C. § 2241, confers federal jurisdiction over claims that an individual is being held "in custody in violation of the Constitution or laws ... of the United States." § 2241(c)(3). The Second Circuit recently held that a "final order of removal is sufficient, by itself, to establish the requisite [INS] custody" for a habeas petitioner who is still serving a sentence for a state conviction. Simmonds v. INS, 326 F.3d 351, 354 (2d Cir. 2003). As a final order of removal has been entered against Bispham, he is in "custody" for the purposes of his habeas petition.

Additionally, however, the Court must have personal jurisdiction over the appropriate respondent to the habeas action. This Court has held that the appropriate respondent in a habeas action challenging an order of deportation is the official having day-to-day control over the petitioner. See Berthold v. Ashcroft, No. 3:02CV658(CFD) (D. Conn. March 6, 2003). As noted above, Bispham is presently confined in the Enfield Correctional Center in Connecticut and is the subject of a detainer by the INS in the District of Connecticut. The District Director of the INS in the District of

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> in accordance with the agreement entered into pursuant to subsection (a) of this section. Any person approved for deportation parole shall waive all rights to appeal his conviction, extradition and deportation.

Conn. Gen. Stat. § 54-125d.

Connecticut, arguably an appropriate respondent to this action, has not been named as a respondent.

However, even if Bispham had named the appropriate respondent, his petition would fail because Zadvydas does not apply to his circumstances. Under 8 U.S.C. § 1228, the INS is authorized to commence expedited removal proceedings against an inmate "before the alien's release from incarceration for the underlying aggravated felony." 8 U.S.C. § 1228(a). Once a prisoner subject to a final order of removal has been "released" from incarceration, however, the "removal period" begins and the alien is required to be removed within ninety days. See 8 U.S.C. § 1231(a)(1)(A)-(B). After the ninety-day removal period, there is a six-month presumption after which the alien must be released if there is no significant likelihood of removal in the reasonably foreseeable future. See Zadvydas, 533 U.S. at 701.

Here, Bispham's parole to the INS pursuant to section 54-125d of the Connecticut General Statutes does not constitute "release" under § 1231. Cf Duamutef v. INS, No. CV02-1345(DGT), 2003 WL 21087984, at *4-5 (E.D.N.Y. May 14, 2003) (holding that New York state prisoner's "conditional parole for deportation only" was not a release that would trigger the removal period). Nor has Bispham otherwise established that he has been released from his state term of incarceration. Accordingly, the ninety-day removal period has not begun and Zadvydas does not apply to him.

III. Conclusion

For the foregoing reasons, the petition for writ of habeas corpus [Doc. #1] is DENIED. The Clerk is directed to close the case.[4]

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[4]Because the petitioner is challenging his federal custody pursuant to section 2241, the Court does not address the issue of a certificate of appealability.

SO ORDERED this _____ day of June 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE