

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

United States of America : Civil Action  
 : No. 97-4795  
 v. :  
 : Criminal Action  
 Gennady Sigal : No. 93-241-02  
 :  
 :

O R D E R - M E M O R A N D U M

AND NOW, this 31st day of July, 1997, Gennady Sigal's motions for habeas corpus relief under 28 U.S.C. §§ 2255 and 2241, and to stay transportation to FCI Oakdale, Louisiana are denied.

Petitioner has not asserted any illegality in either the Immigration and Naturalization Service's notice of initiation of removal (deportation) proceedings; therefore, no ground exists for habeas corpus relief under either § 2255 or § 2241.<sup>1</sup> See United States v. Addonizio, 442 U.S. 178, 186, 99 S. Ct. 2235, 2241, 60 L. Ed. 2d 805 (1979) (change in parole procedure that frustrated subjective intent of sentencing judge did not rise to level of a "fundamental" sentencing error justifying relief under § 2255); In re: Dorsainvil, Civ. No. 96-8074, 1997 WL 409442, \*4 (3d Cir. July 23, 1997) (habeas review under § 2241(c)(3) lies where a prisoner

---

1. It is correct that at the time of sentencing, Mr. Sigal's deportability was not brought to the Court's attention. As sentencing judge, I expected that he would be designated to Bucks County Prison and, if otherwise eligible, placed on work release as I had discussed with a Bureau of Prisons representative. Mr. Sigal was so designated and was placed on work release from February, 1997 until April 21, 1997. On that date, an INS notice of removal proceeding was lodged that, according to Bureau of Prison policy, required curtailment of work release and placement in total confinement.

is "in custody in violation of the Constitution or laws or treaties of the United States.")<sup>2</sup> Inasmuch as Mr. Sigal's motions request the entry of orders that are beyond this court's authority, they must be denied.

---

Edmund V. Ludwig, S.J.

---

2. The threshold issue may be whether the INS notification to the Bureau of Prisons constituted a "detainer," as suggested by Vargas v. Swan, 854 F.2d 1028 (1988) and cited by Mr. Sigal. However, regardless of its contents the notice effectuated a detainer, which could confer habeas jurisdiction.