

No. 04-670

In the Supreme Court of the United States

CONFIDENCE ALERU, PETITIONER

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

PAUL D. CLEMENT
*Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217*

In the Supreme Court of the United States

No. 04-670

CONFIDENCE ALERU, PETITIONER

v.

ALBERTO R. GONZALES, ATTORNEY GENERAL

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT*

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

Pursuant to Rule 15.8 of the Rules of Court, the Acting Solicitor General respectfully files this supplemental brief to bring to the Court's attention new matter.

1. On March 4, 2005, this office learned that petitioner Confidence Aleru has failed to report for a mandatory appointment as part of her supervision by United States Immigration and Customs Enforcement (ICE), and we have also learned that petitioner's current whereabouts are unknown. As discussed below, we believe those circumstances disqualify petitioner from pursuing her petition in this Court.

As the attached documents reflect, petitioner was placed in the ICE Intensive Supervision Appearance Program (ISAP) on October 1, 2004. Pursuant to

the terms of ISAP, petitioner was required to appear, as directed, for purposes of continuing supervision, and to inform ICE of any change of residence. See App., *infra*, 3; 8 C.F.R. 265.1. Petitioner was scheduled to have a face-to-face meeting with her supervisor on December 13, 2004. Petitioner failed to appear for her visit and failed to call or reschedule her appointment. Subsequent attempts to locate petitioner revealed that she had removed her personal belongings from her residence. Petitioner has made no subsequent contact with ICE. We are further informed by counsel for petitioner that he is unaware of his client's whereabouts and unable to contact her.

2. Under the longstanding “fugitive disentitlement doctrine,” this Court has recognized in the criminal context that a federal appellate court “ha[s] authority to dismiss an appeal or writ of certiorari if the party seeking relief is a fugitive while the matter is pending.” *Degen v. United States*, 517 U.S. 820, 824 (1996). Several courts of appeals have held that the fugitive disentitlement doctrine applies to the immigration context as well, and that an alien has no right to insist upon judicial review of her asylum request when, in violation of regulations, she fails to cooperate with the supervision that is necessary to carry out any valid order against her. See, e.g., *Sapoundjiev v. Ashcroft*, 376 F.3d 727, 728-729 (7th Cir.) (failure to appear for administrative detention justified dismissal of petition under fugitive disentitlement doctrine), reh’g denied, 384 F.3d 916 (7th Cir. 2004); *Antonio-Martinez v. INS*, 317 F.3d 1089, 1092-1093 (9th Cir. 2003) (alien’s failure to keep attorney and INS informed of his current address, thus “insulating [himself] from the consequences of an unfavorable result,” warranted dismissal

of petition for review); *Bar-Levy v. INS*, 990 F.2d 33, 35-36 (2d Cir. 1993); *Arana v. INS*, 673 F.2d 75, 77 & n.2 (3d Cir. 1982). As these cases illustrate, there is, at the very least, a serious question whether an alien who fails to comply with the terms of supervision that are designed to permit enforcement against her of an adverse removal order and judicial judgment may at the same time seek affirmative relief from the judiciary. That threshold issue furnishes an additional reason for the denial of certiorari in this case.

Respectfully submitted.

PAUL D. CLEMENT
Acting Solicitor General

MARCH 2005



INTENSIVE SUPERVISION APPEARANCE PROGRAM (ISAP)

Incident Report - Unauthorized Absence

Participant Name: Confidence Aleru	Date: 12.14.04
Alien Registration #: 07B3215 D	BI ISAP Center: SIERRA
Phase Level: Intermediate	ISCS Staff: Lisa Larson
	DHS Contact: Denise Gearey

A. Physical Description of Participant:

This participant is 5'6 and weighs 165 pounds. This participant is a black woman who has no visible scars or tattoos, though has a scar on her stomach. This participant has brown eyes and black hair.

B. Time of absence:

This participant has not been heard from or seen by anyone since Sunday, December 12, 2004.

C. What occurred?

This participant was scheduled to meet with Case Specialist Lisa Larson on 12.13.04 at 12pm for a face to face visit. This participant did not appear for her visit or call to reschedule her appointment.

In attempt to locate this participant it was learned that this participant met with her attorney Benjamin Casper on Sunday, December 12, 2004 but has not had contact with Mr. Casper since that date. Mr. Casper did tell ISAP that he was applying for travel documents for the participant. It was also learned that this participant has also made no contact with her roommate, Hashim Bellay since Sunday, December 12, 2004. Mr. Bellay stated that on December 12, 2004 this participant was very upset about something (he did not know what) and that she was crying. He thought it might have something to do with this participant's children who reside in Sierra Leone. Mr. Bellay has not seen this participant since December 12, 2004.

A home visit (9280 University Avenue NW #240 Coon Rapids, MN 55448 763-533-2674) was completed on Tuesday, December 14, 2004 by Case Specialist Lisa Larson and it was confirmed that this participant's personal belongings, namely her clothing has been moved from her house. Case Specialist Larson stated that it appeared as though this participant rummaged through her personal items in her home and picked the items she wanted and left the remaining items.

D. Any known calls or contacts made by Program Participant prior to absence?

This participant has made no contact with any of the individuals she has provided as personal contacts as they have all been called and none have had contact with this participant since December 12, 2004.

SECRET

This participant did provide the names, addresses and phone numbers of several friends.

Hashim Ballay, 9280 University Ave NW #240 Coon Rapids, MN 55448 763-693-2874 (roommate)

Trancey Songa: 1178 3rd St W #108 Blaine, MN 55434 763-205-2384 (friend)

Benjamin Casper, 1069 South Robert Street West St. Paul, MN 55113 651-271-6881 (attorney)

This participant has shown no unusual behavior prior to her missed appointment and has had no violations while participating in the ISAP.

There is no reason to believe that this absence is involuntary.

H. Other law agencies notified and pointer of contact
Remsey County Jail and Hennepin County Jail were both contacted and they do not have any inmate by
this participant's name.

Mercy, Unity, United, North Memorial, and Abbott hospitals were also contacted and there are no patients admitted under the name of this participant.

12.14.04
Date

Order of Supervision

File No: A78 321 510

Date: 10/01/2004

Confidence ALERU

February 30, 2002, you were ordered:
(Date of last order)

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Since the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

that you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.

that upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.

that you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.

that you do not travel outside Minnesota/Wisconsin/North Dakota for more than 48 hours without first notifying this Service office of the dates and places of such proposed travel.
(Specify geographic limits, if any)

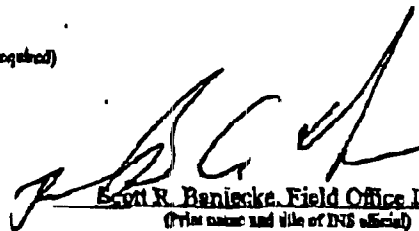
that you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.

that you report in person once a week to this Service office at: Report to Officer Robert Johnson
Immigration and Removals 2901 Metro Drive, Suite 100 Bloomington, MN 55425 unless you are granted written permission to report at other date.

that you assist the Immigration and Naturalization Service in obtaining any necessary travel documents.

Further, That you follow the instructions and abide by the rules of the Intensive Supervision Appearance Program (ISAP). Failure to do so will result in the revocation of this Order of Supervision and you will be taken back into DHS custody.

see attached sheet containing other specified conditions (Continue on separate sheet if required)


Scott R. Benicewicz, Field Office Director
(Print name and title of DHS official)

Allen's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a detention, or prosecution.

10/1/04
(Signature of DHS official serving order)

Confidential
(Signature of alien)

10/1/04
(Date)

**U.S. Immigration and Customs Enforcement (ICE)
Intensive Supervision Appearance Program (ISAP)
Placement Worksheet**

Field Office: St. Paul

Date: 10/01/2004

DRO Officer: Johnson

Alien Registration Number: 78321510

Date in Custody: 10/01/2004

Alien Last Name ALERU

Alien First Name Confidence

(As shown in DACA)

DOB: 12/02/1974

Gender: Female

Country: ~~Star~~

Language: English

Criminal: NO

Asylum Applicant NO YES N/A

(Do NOT provide asylum information to the contractor)

Indicate the type of case that applies:

C. Notice to Appear (Post Order)

ELIGIBILITY DETERMINATION:

1. YES Has the alien's identity been verified?
2. YES Will the alien reside and maintain venue within ISAP jurisdiction?
3. YES Has the alien agreed to participate in ISAP?
4. NO Is the alien a mandatory detention case?
5. NO Is removal imminent? (Final order/travel documents requested)
6. NO Has the alien previously violated ISAP conditions?
7. NO Has the alien demonstrated violent behavior or appear to pose a threat to public safety?

If responses to question 1, 2, or 3 are NO or responses to questions 4, 5, 6, or 7 are YES, the alien is INELIGIBLE for release into this program and completion of this worksheet is not indicated.

Please complete the following information for ISAP placement:

Circle OneScore

1. **Criminal History - (Prior Arrests/Convictions):**
 - A. Good (no prior felonies, 1-5 non-violent misdemeanors) 0
 - B. Satisfactory (1-3 non-violent felonies; 3-5 misdemeanors; 0-2 violent misdemeanors) 3
 - C. Poor (4+ non-violent felonies; 0-2 + violent felonies; 6+ misdemeanors; 3 + violent misdemeanors) 6
2. **Supervision History**
 - A. Good (no prior revocations, absconds or failure to report) 0
 - B. Satisfactory (1 prior revocation, abscond or failure to report) 4
 - C. Poor (2 or more revocations, absconds or failure to report) 6
3. **Substance Abuse**
 - A. No Known History 0
 - B. Minor Problem (occasional abuse, may need or is already in out-patient treatment, recovering addict) 2
 - C. Moderate Problem (participant in denial, minimizing drug use, may have some periods non-use) 4
 - D. Severe Problem (practicing addict, no desire to abstain) 6
4. **Home**
 - A. Stable (No change in place of residence or significant order in the home in the last 6 months, acceptable location) 0
 - B. Satisfactory (1 change in place of residence or significant other in preceding 6 months, new arrival into U.S., and acceptable location) 4
 - C. Unsatisfactory (2 or more changes in place of residence or significant other residence in preceding 6 months, transient population within residence, high crime area, history of criminal activity such as drug sales out of present residence) 6
5. **Community or Family Support**
 - A. Established family support with whom alien will reside 0
 - B. Established community support with whom alien will reside 4
 - C. Alien has community and/or family support but will not reside with them 6
 - D. Alien has no community or family support but has a residence 9
6. **Attitude**
 - A. Good (cooperative and willing to work within program guidelines) 0
 - B. Satisfactory (not happy about the situation, may require more supervision, but realizes it is better than detention) 4
 - C. Poor (alien is very upset about being placed in the program) 6

TOTAL SCORE: 0

Total Points:

0-8

Low risk

9-13

Moderate risk

14-19

High risk

20 +

Maximum risk

The total score represents potential risks that may be associated with supervising and monitoring ISAP participants and will assist in establishing appropriate supervision and control measures to minimize those risks.

Other Relevant Information: (Special notification procedures required, medical needs or issues, employment eligibility, case history, known criminal or behavior violations, etc.)

Family/Sponsor/Community Support - Name, Address, Telephone Information:

5632 Boone Ave North

New Hope, MN 55428

(763) 533-2674

Alien eligible for ISAP? YES

If Yes, Indicate ISAP location: St. Paul

ISAP Officer Completed Review:



Date 10/1/04

Signature and Officer ID (MCS)

Supervisor Concurrence: Y or N



Date 10/1/04

Supervisor Signature

Alien referred to ISAP: YES (If no, indicate why in comments section, Page 4)

Date case referred to contractor:

N - Please coordinate the intake/orientation appointment with DHS.

Date of actual Intake/Orientation into ISAP

(For Billing Purposes)

HQDRO concurrence is required for Post Order Custody Review (POCR) or Operation Compliance allens being assigned to ISAP.

CIRCLE TYPE OF CASE: Operation Compliance Post Order Custody Review

HQDRO Decision: Approved or Not / approved

HQDRO ISAP Official Name/Signature _____ Date: _____

Comments:
