

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Father JAMES MANSHIP,)
)
 Plaintiff,)

COMPLAINT

v.)

April 13, 2009

JANET NAPOLITANO, Secretary of)
Homeland Security; JOHN TORRES,)
Acting Assistant Secretary of United States)
Immigration and Customs Enforcement,)
United States Department of Homeland)
Security; JOANNA ROPPEL, Acting)
Assistant Director of Mexico City District)
Office of United States Department of)
Homeland Security; GEORGE)
SULLIVAN, Assistant Field Office)
Director of the Hartford Office of)
Detention and Removal Operations; the)
UNITED STATES OF AMERICA,)

Defendants

COMPLAINT

1. This is an action to compel the return of an immigration bond raised by community donations and posted by Plaintiff Father James Manship, pastor of St. Rose of Lima Church, on behalf of Delfino Perez-Corona, a Mexican national. Despite Mr. Perez-Corona's full compliance with all terms and conditions of the bond agreement, including his timely departure from the United States, Defendants have confiscated, and refused to

return, the bond sum, in violation of the Fifth Amendment to the United States Constitution and the Administrative Procedure Act.

2. Immigration and Customs Enforcement (“ICE”) officials detained Mr. Perez-Corona, a parishioner at St. Rose of Lima Church, on June 6, 2007. Friends of Mr. Perez-Corona and community members contributed to a bond fund established by St. Rose and other community organizations, and Fr. Manship used these funds to post bond for Mr. Perez-Corona.
3. Upon posting of his bond, ICE officials released Mr. Perez-Corona. He complied with all terms of his release, and timely departed the country on May 24, 2008, as required, pursuant to a grant of voluntary departure. Mr. Perez-Corona then submitted proof of his departure to the U.S. Department of Homeland Security (“DHS”) in Mexico in early June, 2008, as also required.
4. DHS is mandated by law to return a bond to the bond obligor after the bond has been cancelled and all conditions for its return have been satisfied. Nevertheless, Defendants have confiscated, and refused to return, the bond to Plaintiff Fr. Manship, thus depriving Fr. Manship of the money to which he is entitled.

JURISDICTION AND VENUE

5. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361, 2201, and 2202 and Article III of the Constitution.
6. Venue lies in this district pursuant to 28 U.S.C. § 1391(e)(2), as a “substantial part of the events or omissions giving rise to this claim occurred” in Connecticut, and pursuant to *id.* § 1391(e)(3), as Plaintiff resides in Connecticut and no real property is involved in this action.

PARTIES

7. Plaintiff Fr. James Manship is a United States citizen. He is a resident of New Haven, Connecticut, and the pastor of the St. Rose of Lima Church in New Haven. After community members had made sufficient contributions to a bond fund established by the church, Fr. Manship posted those funds as bond on behalf of Delfino Perez-Corona, a Mexican citizen who was a parishioner at the St. Rose of Lima Church.
8. Defendant Janet Napolitano is Secretary of the Department of Homeland Security (“DHS”), which is responsible for processing the bond posted on Mr. Perez-Corona’s behalf. She is sued in her official capacity.
9. Defendant John Torres is the Acting Assistant Secretary of United States Immigration and Customs Enforcement (“ICE”), which is the component of DHS responsible for refunding the bond after the bonded alien has timely departed and produced the necessary forms to ICE. He is sued in his official capacity.
10. Defendant Joanna Roppel is the Acting Assistant District Director of the Department of Homeland Security at the United States consulate in Mexico City, Mexico. The office of DHS in the U.S. embassy is responsible for receiving proof of Mr. Perez-Corona’s timely departure and sending it to Immigration and Customs Enforcement in Hartford, Connecticut, to enable ICE to cancel the bond. She is sued in her official capacity.
11. Defendant George Sullivan is the Assistant Field Office Director of the Hartford Office of Detention and Removal Operations, a component of Immigration and Customs Enforcement, which itself is a component of the United States Department of Homeland Security. The DRO in Hartford is the office that collected the bond but refuses to return it. George Sullivan is sued in his official capacity.

12. The United States is responsible for ensuring that its agencies comply with the law.

STATEMENT OF FACTS

13. ICE agents arrested Mr. Perez-Corona on June 6, 2007.

14. On the date of his arrest, Mr. Perez-Corona resided at 11 Warren Place, New Haven, Connecticut.

15. On or about June 6, 2007, ICE officer Richard McCaffrey set an appearance bond for Mr. Perez-Corona at \$15,000.

16. On or about June 8, 2007, through counsel, Mr. Perez-Corona moved for a bond redetermination before the Immigration Court. Immigration Judge Michael Straus granted this motion and reduced the bond to \$7,000 on or about June 20, 2007.

17. Using contributions donated by friends of Mr. Perez-Corona and community members for this purpose, Fr. Manship posted the bond sum of \$7,000 on June 26, 2007, and is the obligor of the bond. Fr. Manship posted this sum in full because immigration bonds must be paid 100%.

18. Fr. Manship deposited the money with ICE.

19. On February 5, 2008, Mr. Perez-Corona appeared with counsel for a removal hearing before Immigration Judge Straus, at which time he applied for and was granted the relief of voluntary departure. The voluntary departure order permitted Mr. Perez-Corona to depart the United States, at his own expense, on or before June 4, 2008.

20. On or about May 19, 2008, Mr. Perez-Corona went with counsel to the Office of Detention and Removal Operations ("DRO") in Hartford, Connecticut. DRO officers in Hartford gave Mr. Perez-Corona an ICE Form G-146. The Form G-146 is a "Nonimmigrant Checkout Form."

21. A DRO officer in Hartford, Connecticut, told Mr. Perez-Corona that in order to have his bond cancelled, he was required to submit his Form G-146 to the Department of Homeland Security at the U.S. embassy in Mexico after he departed the United States. DHS further advised Mr. Perez-Corona that after he submitted his G-146 to DHS in Mexico, DHS would forward the form to the DHS office in Hartford, Connecticut, at which point the bond would be cancelled and returned to the obligor.
22. Mr. Perez-Corona timely departed the country on May 24, 2008.
23. As required, Mr. Perez-Corona submitted his Form G-146 to the DHS office at the United States consulate in Mexico City, Mexico, in early June, 2008.
24. The U.S. Consulate is obligated to forward Mr. Perez-Corona's G-146 to the DHS Field Office in Hartford, Connecticut.
25. Although Mr. Perez-Corona properly submitted his G-146 form to DHS, DHS has not cancelled Mr. Perez-Corona's bond and returned the money to Fr. Manship.
26. One of the undersigned law student interns, as counsel, called the DRO Finance Center in Burlington, Massachusetts, to ascertain the status of Mr. Perez-Corona's bond. The Finance Center claimed that the DRO office in Hartford, Connecticut, had not instructed the Finance Center to cancel the bond.
27. On February 5, 2009, Fr. James Manship called the DRO Finance Center in Burlington, Massachusetts, to inquire about the status of Mr. Perez-Corona's bond. A DRO employee told Fr. Manship that the finance center had not received notice of the cancellation of the bond.

28. Fr. Manship then called the Department of Homeland Security office in Hartford, Connecticut. A DHS employee told Fr. Manship that Mr. Perez-Corona's file was in "another department" but refused to provide additional details.
29. To date, DHS has refused to return to Fr. Manship the bond posted on behalf of Mr. Perez-Corona.

FIRST CLAIM FOR RELIEF:

Fifth Amendment Right to Due Process

30. Plaintiff incorporates the allegations in Paragraphs 1 through 29 above as though fully alleged herein.
31. Pursuant to ICE's own rules and regulations, as described in its Form I-352, "Cancellation of a bond issued as a delivery bond shall occur upon any of the following, provided they occur prior to the date of a breach: . . . voluntary departure by the bonded alien as evidenced by valid proof thereof." Form I-352, "General Terms and Conditions."
32. Mr. Perez-Corona departed the United States within the time specified.
33. Mr. Perez-Corona has properly submitted his G-146 form to the Department of Homeland Security, the government authority vested with the responsibility for returning the bond that Fr. Manship posted on Mr. Perez-Corona's behalf.
34. Defendants have failed to return Fr. Manship's bond money as required under ICE's own regulations.
35. Because Mr. Perez-Corona timely departed the United States and submitted proof of his departure to the DHS, Fr. Manship has a legitimate claim of entitlement to the bond he posted for Mr. Perez-Corona. By failing to return Mr. Perez-Corona's bond, Defendants

have deprived Fr. Manship of his property interest in the bond without due process of law, in violation of the Fifth Amendment.

SECOND CLAIM FOR RELIEF:

Administrative Procedure Act

36. Plaintiff incorporates the allegations in Paragraphs 1 through 35 above as though fully alleged herein.
37. Mr. Perez-Corona submitted his G-146 form to the Department of Homeland Security as required. Defendants have a duty to return the bond submitted on Mr. Perez-Corona's behalf.
38. The refusal of Defendants to return the bond posted by Fr. Manship constitutes final agency action.
39. Fr. Manship has exhausted his administrative remedies.
40. Defendants have confiscated and failed to return the bond money and have thus "unlawfully withheld or unreasonably delayed" agency action. 5 U.S.C. § 706(1).
41. In the alternative, by confiscating and refusing to return the bond money, Defendants have acted in a manner that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." U.S.C. §706(2).
42. By the foregoing actions and inactions, Defendants have violated the Administrative Procedure Act.

THIRD CLAIM FOR RELIEF

Mandamus Act

43. Plaintiff incorporates the allegations in paragraphs 1 through 42 above as though fully alleged herein.

44. The Defendants have failed to cancel Mr. Perez-Corona's bond and return the money to Fr. Manship despite the fact that Mr. Perez-Corona has provided proof of his return to Mexico.
45. If this Court declines to provide the Plaintiff with the other forms of relief requested, then 28 U.S.C. § 1361 would provide the only avenue of relief available to Plaintiff from the deprivation of his property interest that is resulting from Defendants' failure to cancel Mr. Perez-Corona's bond.
46. The Defendants' failure to discharge their ministerial duty to cancel Mr. Perez-Corona's bond and return the money to Fr. Manship violates the Mandamus Act, the APA and the Fifth Amendment.

Prayer for Relief

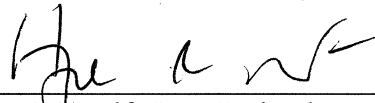
WHEREFORE, Plaintiff requests that the Court:

- (1) Assume jurisdiction over the matter;
- (2) Declare Defendants' confiscation of and refusal to return Fr. Manship's bond money arbitrary, capricious, and an abuse of discretion in violation of the 5th Amendment and the APA,
- (3) Compel Defendants to return Fr. Manship's bond money under the Administrative Procedure Act;
- (4) In the alternative, issue a writ of mandamus compelling Defendants to return Fr. Manship's bond posted on behalf of Mr. Perez-Corona with all deliberate speed;
- (5) Take such other and further relief as this Court deems just and proper under the circumstances.

Dated April 13, 2009

New Haven, CT

Respectfully Submitted,



Hope Metcalf, Esq., Federal Bar No. ct27184
Michael Wishnie, Esq., Federal Bar No. ct27221
Anant Saraswat, Law Student Intern
Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, CT 06520-9090