

FILED

December 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10630
Summary Calendar

ADRIAN ROSALES,

Petitioner-Appellant,

versus

BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:03-CV-115

Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Adrian Rosales, Texas prisoner # 1015463, appeals from the district court's dismissal of his 28 U.S.C. § 2241 petition in which sued the Bureau of Immigration and Customs Enforcement to attack his 2002 removal order. The district court held that it lacked jurisdiction over the petition because Rosales, who is currently serving a 65-year state sentence for aggravated kidnaping, is not is not in custody on any immigration charge.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Rosales has not demonstrated error in the district court's determination that he failed to meet the "in custody" requirement for purposes of 28 U.S.C. § 2241 jurisdiction. See Zolicoffer v. United States Dep't of Justice, 315 F.3d 538, 540 (5th Cir. 2003); United States ex rel. Marcello v. Dist. Director, INS, 634 F.2d 964, 970 (5th Cir. 1981).

AFFIRMED.