

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40636

Summary Calendar

EMILIO CARDENAS-PEREZ,

Petitioner-Appellant,

versus

JONATHAN DOBRE,

Respondent-Appellee.

Appeal from the United States District Court
For the Eastern District of Texas
USDC No. 01-CV-663

January 23, 2003

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Petitioner Emilio Cardenas-Perez, immigration detainee # 06519-0000, appeals the district court's denial of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Cardenas, a Cuban national, arrived in the United States in 1980 with the Mariel boatlift. Cardenas, together with the other

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Mariel Cubans, was determined by the Immigration and Naturalization Service to be excludable and was placed on immigration parole. He has been detained in federal custody since 1990 following his parole from a state criminal conviction. He has received regular parole review but has been denied release. Relying on *Zadvydas v. Davis*,¹ Cardenas contends that his continued detention violates his constitutional rights.

The district court did not err in determining that Cardenas is not entitled to relief.² Although *Zadvydas* held that a deportable alien may contest his continued detention in a 28 U.S.C. § 2241 proceeding, the Court distinguished the status of deportable aliens from that of excludable aliens like Cardenas.³ Cardenas' petition is governed by *Gisbert*.

AFFIRMED.

¹ 533 U.S. 678 (2001).

² See *Gisbert v. U.S. Attorney Gen.*, 988 F.2d 1437, 1439 (5th Cir. 1993), amended by *Gisbert v. U.S. Attorney Gen.*, 997 F.2d 1122 (5th Cir. 1993).

³ See *Zadvydas*, 533 U.S. at 682, 692-94.