

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-5180
Summary Calendar

SAMSON O. AGBOSASA,

Petitioner-Appellant,

VERSUS

JOHN B. Z. CAPLINGER, District Director,
Immigration and Naturalization Service,

Respondent-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
92 CV 500

May 5, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:¹

Petitioner appeals the district court's denial of habeas relief under § 2241. More particularly, he challenges the court's order denying relief unless he posts a \$16,000 bond set by an immigration judge as a condition of his release pending a final determination of his deportability. We affirm.

Petitioner Samson Agbosasa, a citizen of Nigeria, is currently incarcerated at the Federal Correctional Institute in Oakdale,

¹Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Louisiana. In 1991, Agbosasa was convicted of filing false income tax returns and of false representation of a social security number. He received concurrent eighteen-month sentences on these counts. The Immigration and Naturalization Service (INS) then issued an Order to Show Cause why Agbosasa should not be deported. The Immigration Judge set bail at \$16,000, and the Board of Immigration Appeals (BIA) denied Agbosasa's request for a bond redetermination. Agbosasa then filed a 28 U.S.C. § 2241 petition in the district court seeking review of the BIA's refusal to reduce or extinguish the bond. Finding that there was a reasonable foundation in the record for the BIA's decision, the district court denied habeas relief. This appeal followed.

II.

Agbosasa contends that the \$16,000 bond set in his case is "arbitrary, capricious, and in violation of due process."

Before reaching the merits of a case, this Court must first examine the basis of its jurisdiction on its own motion if necessary. **Mosley v. Cozby**, 813 F.2d 659, 660 (5th Cir. 1987). This Court does not have jurisdiction to review directly bond determinations involving INS detainees. **See Young v. United States Dept. of Justice**, 759 F.2d 450, 457 (5th Cir.), **cert. denied**, 474 U.S. 996 (1985). However, limited review of a bond determination is permitted in a habeas corpus proceeding brought pursuant to 8 U.S.C. § 1252(a)(1)(C). That section provides that court review in a habeas proceeding is permitted "upon a conclusive showing . . . that the Attorney General is not proceeding with such reasonable

dispatch as . . . to determine deportability." **Id.**

Agbosasa does not allege that the Attorney General is not proceeding with such reasonable dispatch. Nevertheless, as Agbosasa has apparently exhausted his administrative remedies, he is not precluded from testing the validity of his bond/detention status in a § 2241 proceeding. **See Massoumi-Demaghi V. Weiss**, 631 F. Supp. 1525, 1526-27 (D. Conn. 1986).

An alien may be held in custody or released on bond of not less than \$500 or released on conditional parole pending a final decision of deportability. 8 U.S.C. § 1252(a). The Attorney General has delegated practically all of his powers under § 1252(a) to the BIA. **See 8 C.F.R. § 3.1(d); United States ex rel. Barbour v. District Dir. of I.N.S.**, 491 F.2d 573, 577 n.4 (5th Cir.), **cert. denied**, 419 U.S. 873 (1974). In turn, the BIA has construed this section to provide that a person should be detained without bail only upon a finding that he is a poor bail risk or a threat to national security. **See United States ex rel. Barbour**, 491 F.2d at 576-77; **Matter of Ellis**, I & N Dec. (BIA 1993), 1993 WL 65657 at *3. The court's scope of habeas review is limited to the determination "whether there is any basis in fact for the agency's decision." **United States ex rel. Barbour**, 491 F.2d at 578. A habeas petition directed at the INS usually is reviewed only by reference to the administrative record. **Johns v. Department of Justice**, 653 F.2d 884, 896 (5th Cir. 1981).

The BIA refused to reduce Agbosasa's bond on the ground that his criminal record makes him a poor bail risk. An alien's

criminal record is a factor to be considered in evaluating the risk of flight he poses pending a final decision of deportation. **O'Rourke v. Warden, Metropolitan Correction Center**, 539 F. Supp. 1131, 1136 (S.D.N.Y. 1982); **Matter of P-C-M**, I & N Dec. (BIA 1991), 1991 WL 323118 at *6. Because Agbosasa's criminal history is relevant to the determination of bail, the BIA's determination has at least some basis in the record. The district court's denial of habeas relief is therefore affirmed.²

AFFIRMED.

²Agbosasa has also filed an "application for enforcement" with respect to a 1990 bond determination. This application is denied as moot.