

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8668
Conference Calendar

GREGORIO VALDEZ-OROSCO,

Plaintiff-Appellant,

versus

THE IMMIGRATION AND NATURALIZATION
SERVICE,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-92-CA-588-JN
- - - - -

May 6, 1993

Before POLITZ, Chief Judge,
HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:*

Gregorio Valdez-Orosco, an incarcerated illegal alien, is seeking to compel the Immigration and Naturalization Service (INS) to commence deportation proceedings to return him to his native country prior to the completion of his prison term. The INS has a duty to immediately deport Valdez under the Mandamus Act, 28 U.S.C. § 1361, or the Administrative Procedure Act (APA), 5 U.S.C. §§ 500-706, if his interest falls within the "zone of

* Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

interest" protected by 8 U.S.C. § 1252(i).

Section 1252(i) provides that "in the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction." This provision imposes a duty on the Attorney General to deport criminal aliens, but does not create a duty owed to aliens. Giddings v. Chandler, 979 F.2d 1104, 1110. (5th Cir. 1992). Because Valdez's interest does not fall within the "zone of interest" protected by § 1252(i), Valdez does not have standing under the Mandamus Act or the APA to compel a deportation hearing. Id.

Valdez contends that the INS is violating its statutory duty because it is postponing the deportation proceedings until his prison term is completed. Even if the INS is violating its statutory duty, Valdez does not have standing to raise the issue. Id.

The appeal is without arguable merit and, thus, frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2. The motion of the INS to stay the briefing schedule and to dismiss the appeal is DENIED as moot.