

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-1236
Summary Calendar

DELROY LEWIN,

Petitioner-Appellant,

VERSUS

RON THOMPSON, ET AL.,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
3:92 CV 2402 T

June 21, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:¹

Lewin appeals the dismissal of his habeas petition. We affirm.

I.

Delroy Lewin, a citizen of Jamaica, is currently serving three concurrent sentences in federal prison for drug offenses. Following his conviction, the Immigration and Naturalization

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Service (INS) filed a detainer against Lewin.² Lewin then petitioned for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, in which he asserted that the detainer violates his rights under the fifth and sixth amendments of the U.S. Constitution. The district court denied relief and Lewin lodges this appeal.

II.

Although the INS detainer may affect Lewin's status and classification in prison, he is not in custody of the INS for habeas purposes. **See, e.g., Prieto v. Gluch**, 913 F.2d 1159, 1162-64 (6th Cir. 1990), **cert. denied**, 498 U.S. 1092 (1991); **Orozco v. U.S. Immigration & Naturalization Serv.**, 911 F.2d 539, 541 (11th Cir. 1990); **Campillo v. Sullivan**, 853 F.2d 593, 595 (8th Cir. 1988), **cert. denied**, 490 U.S. 1082 (1989). According to the Second Circuit, this holding expresses

the clear majority view that an INS detainer constitutes (1) a notice that future INS custody will be sought at the conclusion of a prisoner's pending confinement by another jurisdiction, and (2) a request for prior notice regarding the termination of that confinement, and thus does not result in present confinement by the INS. . . .

Roldan v. Racette, 984 F.2d 85, 88 (2d Cir. 1993); **see also Payo v. Hayes**, 754 F.Supp. 164, 165 (N.D. Cal. 1991) (INS detainer does not ripen into actual INS custody so as to require deportation hearing until conclusion of underlying sentence). This is consistent with our own cases. **See Santana v. Chandler**, 961 F.2d 514, 516 (5th Cir. 1992). This Court ruled in **Santana** that "[s]uch a result is

² The detainer does not appear in the record.

consistent with other holdings of this court under different but similar circumstances." **Id.** (citing **U.S. ex. rel. Marcello v. District Director of Immigration & Naturalization Serv.**, 634 F.2d 964, 970 (5th Cir.) (mere existence of outstanding deportation order did not amount to "custody"), **cert. denied**, 452 U.S. 917 (1981)).

Because the district court correctly dismissed Lewin's habeas petition, its order is affirmed.

AFFIRMED.