

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2406

LAZARO MENDIVAS GONZALES,

Plaintiff-Appellant,

versus

JAMES ANDREW COLLINS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas
(CA H 92 1701)

(April 22, 1994)

Before REAVLEY and JOLLY, Circuit Judges, and PARKER, District
Judge.*

PER CURIAM**

Appellant Lazaro Gonzales was an inmate of the Texas
Department of Criminal Justice ("TDCJ") when he filed this civil
rights action pursuant to 42 U.S.C. § 1983 alleging that James
Collins, Director of TDCJ; Jack Kyle, Chairman of the Texas Board

*Chief Judge of the Eastern District of Texas, sitting by
designation.

**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should not be published.

of Pardons and Parole; and the TDCJ violated his constitutional liberty rights by refusing to release him to mandatory supervision as required by TEX. CODE CRIM. PROC. art. 42.18, § 8(c). That statute provides in pertinent part:

[A] prisoner who is not on parole shall be released to mandatory supervision by order of a parole panel when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he has served.

TEX. CODE CRIM. PROC. art. 42.18, § 8(c) (West Supp. 1993) (emphasis added).

Originally, the district court dismissed the suit, Mr. Gonzales appealed, and we remanded the case for further proceedings. On remand, the district court dismissed the suit again, and Mr. Gonzales has once again appealed.

After a careful study of the briefs and review of relevant parts of the record, we are convinced that, although we do not expressly adopt its reasoning, the district court nevertheless committed no reversible error in entering a final judgment against Mr. Gonzales. It is true that Mr. Gonzales was ultimately released by the TDCJ in February 1993, many months after his release came due under Texas' mandatory supervision release statute. But, neither then, nor at any other time, was Mr. Gonzales entitled to be released to the free world. Instead, he was required to be, and was released to the custody of the Immigration and Naturalization Service (the "INS"), who had filed a detainer against him at the time he entered the TDCJ. To this date, Mr. Gonzales is being held

under the authority of the INS awaiting his deportation to Cuba.

Given that Mr. Gonzales was never entitled to be released to freedom under the Texas mandatory supervision release statute, but was entitled only to be transferred to federal detention under the authority of the INS, we hold that Mr. Gonzales, in failing to be timely released from state to federal custody, has suffered no deprivation of liberty, and hence has suffered no constitutional injury for which he is entitled to damages under § 1983. Accordingly, we conclude that the district court committed no reversible error in dismissing Gonzales' § 1983 claim. Thus, the judgment of the district court is hereby

A F F I R M E D.