

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4224
Conference Calendar

MAXIMO DE LA CRUZ,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:92cv54
- - - - -
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Maximo De La Cruz challenges the dismissal of his petitions for writ of mandamus and for writ of habeas corpus. He argues that, due to the restricted prison conditions imposed as a result of the detainer lodged by the Immigration and Naturalization Service (INS), he is sufficiently "in custody" of the INS for habeas purposes. "[T]he controlling issue is whether he was in custody of the INS when he filed his petition." Santana v. Chandler, 961 F.2d 514, 516 (5th Cir. 1992). This Court has

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

noted that other circuits' holdings, that a prisoner in De La Cruz's situation is not in the custody of the INS for habeas purposes, "is consistent with other holdings of this [C]ourt under different but similar circumstances." Id. (footnote omitted). Therefore, the district court was without habeas jurisdiction, and it did not err in dismissing the habeas motion.

To the extent that De La Cruz argues that he was entitled to mandamus, he does not have standing under 8 U.S.C. § 1252(i).

Giddings v. Chandler, 979 F.2d 1104, 1108-10 (5th Cir. 1992).

For standing under the Mandamus Act, 28 U.S.C. § 1361, De La Cruz

must not only satisfy the constitutional requirements of injury, causation, and redressability, but must also establish that a duty is owed to him. Any duty owed to the plaintiff must arise from another statute -- in this case § 1252(i) -- or from the United States Constitution. When the right alleged stems from a statute, a duty is owed to the plaintiff for the purpose of the Mandamus Act if -- but only if -- the plaintiff falls within the "zone of interest" of the underlying statute.

Id. at 1108 (footnotes omitted). This Court has held that a criminal alien, such as De La Cruz, "does not possess a right under § 1252(i) sufficient to bring him within the statute's zone of interest." Id. at 1110.

For the first time, De La Cruz argues that he is entitled to mandamus relief based upon the Due Process and Equal Protection Clauses. "[I]ssues raised for the first time on appeal `are not reviewable by this [C]ourt unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" United States v. Garcia-Pillado, 898 F.2d 36, 39

(5th Cir. 1990) (citation omitted). Because De La Cruz's argument is conclusional, there is no manifest injustice.

Because De La Cruz does not have standing for the writ of mandamus, and because the district court was without habeas jurisdiction, we AFFIRM. Because controlling caselaw disposes of the issues on appeal, the interests of justice do not require appointment of counsel. See Santana, 961 F.2d at 515-17. De La Cruz's motion for appointment of counsel is DENIED.

AFFIRMED.