

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-4279  
Conference Calendar

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SERGIO LUIS DELGADO-NUNEZ,

Petitioner-Appellant,

versus

IMMIGRATION AND NATURALIZATION  
SERVICE,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 5:92-CV-108  
- - - - -  
(November 1, 1993)

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

PER CURIAM:\*

Sergio Luis Delgado-Nunez challenges the district court's dismissal of his application for writ of mandamus by arguing that, under 8 U.S.C. § 1252(i), the Immigration and Naturalization Service (INS) has a duty to begin the deportation proceedings. He requests that the INS be compelled to hold a hearing immediately. The statute provides that "in the case of an alien who is convicted of an offense which makes the alien

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction." 8 U.S.C. § 1252(i).

For standing under the Mandamus Act, 28 U.S.C. § 1361,  
Delgado

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.

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

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

Delgado's arguments as to a duty arising under the Constitution are also unavailing. Since deportation proceedings are civil in nature, there is not a Sixth Amendment right to a speedy deportation proceeding. See Immigration & Naturalization Serv. v. Lopez-Mendoza, 468 U.S. 1032, 1038, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984). Moreover, deportation proceedings are not designed to punish; thus, there is not a violation of the Eighth Amendment's prohibition on cruel and unusual punishment. See Id.

AFFIRMED.