

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-9156  
Conference Calendar

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EMMANUEL ONYIDO,

Petitioner-Appellant,

versus

JANET RENO, Attorney General  
of the United States, ET AL.,

Respondents-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CV-1937-H  
- - - - -

(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Emmanuel Onyido appeals the district court's dismissal for lack of jurisdiction of his habeas petition under 28 U.S.C. § 2241. Onyido argues that the district court erred by dismissing his petition because he meets the "in custody" requirements for habeas relief.

"[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). In Santana, we noted that other circuits' holdings, that a prisoner in Onyido's situation is not in custody of the INS for

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

habeas purposes, are "consistent with other holdings of this [C]ourt under different but similar circumstances." Id. One of those cases, Prieto v. Gluch, 913 F.2d 1159, 1163-64 (6th Cir. 1990), cert. denied, 498 U.S. 1092 (1991), distinguished the habeas corpus "in custody" cases on which Onyido relies. Therefore, the district court was without habeas jurisdiction, and it did not err in dismissing the petition.

Onyido also argues that the INS has violated his due process and Fifth Amendment rights by not completing the deportation proceedings within the four and one-half years that he has been incarcerated.

In Giddings v. Chandler, 979 F.2d 1104 (5th Cir. 1992), we concluded that "while [8 U.S.C.] § 1252(i) imposes a duty on the Attorney General to begin proceedings once an alien is deemed deportable because of a conviction, that statute also grants the Attorney General the discretion to proceed `as expeditiously as possible.'" Id. at 1109-10. We rejected the theory that the Attorney General's duty to proceed expeditiously created a duty owed to the alien and afforded the alien standing to bring an action to compel the INS to act. 979 F.2d at 1110. Similarly, Onyido does not have standing to request a waiver of deportability or the completion of his INS deportation proceeding by way of a habeas petition.

AFFIRMED.