

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40134
Conference Calendar

VALENTINO ADEPEGBA,

Petitioner-Appellant,

versus

SHERIFF, RICHLAND PARISH, ET AL.,

Respondents-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 3:93-CV-2064
- - - - -

(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

In February 1993, while Valentino Adepegba was serving a federal sentence for mail fraud, the Immigration and Naturalization Service (INS) served him with an "Order to Show Cause and Notice of Hearing" based on his 1985 Louisiana state court conviction for possession of cocaine. In December 1993, eight years after he was released from state custody, Adepegba filed a federal petition for writ of habeas corpus challenging the voluntariness of his 1985 guilty plea. The district court construed Adepegba's petition as a challenge to the INS show

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

cause order under 28 U.S.C. § 2241 and dismissed it without prejudice for failure to exhaust administrative remedies.

Adepegba argues that the district court misconstrues the basis of his habeas petition. He contends that he filed a petition under 28 U.S.C. § 2254 challenging his 1985 conviction. He further contends, that although his sentence for this conviction fully expired in December 1985, he is "in custody" within the meaning of § 2254(a) because there is a "positive and demonstrable nexus" between his current custody on the INS show cause order and his Louisiana state conviction.

To obtain relief under § 2254 a petitioner must be in custody pursuant to a state court judgment. See 28 U.S.C. § 2254(a). Adepegba is in federal custody pursuant to an INS order and therefore must bring his petition under § 2241. A petitioner challenging an INS order under § 2241 must exhaust his administrative remedies. See Rodriguez v. I.N.S., 9 F.3d 408, 414 (5th Cir. 1993). Adepegba does not challenge the district court's finding that he failed to exhaust his administrative remedies, and therefore the district court's judgment is AFFIRMED.